APPENDIX

Supreme Court, U. S.
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Supreme Court of the United States

OCTOBER TERM, 1975

74-858
74-859

HUGH L. CAREY, Governor of the State of New York, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, SIDNEY A. FINE, Justice of the Supreme Court of the State of New York, First Judicial District and GEORGE BEISHEIM, JR., Justice of the Supreme Court of the State of New York, Ninth Judicial District,

Appellants, (74-858)

and

CURTIS CIRCULATION COMPANY, CONTINENTAL CASUALTY COMPANY,

Appellants, (74-859)

against

BERT RANDOLPH SUGAR and WRESTLING REVUE, INC.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Jurisdictional Statements Filed, January 13, 1975.
Probable Jurisdiction Noted, April 14, 1975.

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DATE	PROCEEDINGS
1-3-74	Filed complaint and issued complaint
1-16-74	Filed plaintiff's application for convening of three-judge court (returnable January 28, 1974)
1-29-74	Filed answer of defendant National Sports Publishing Corp.
2-1-74	Filed answer of defendant Curtis Circulation Co.
2-8-74	Filed notice of appearance by LOUIS J. LEFKOWITZ for defendants Fine and Beisheim
2-13-74	Filed defendant Curtis' affidavit, notice of motion and memorandum to dismiss complaint.
2-21-74	Filed supplemental affirmation of defendant Curtis in support of motion dismissal
2-26-74	Filed plaintiffs' memo in opposition to defendants' motion
3-8-74	Filed defendant Curtis Circulation's reply memo of law
4-8-74	Filed plaintiffs' application for extension of oral protective order
4-30-74	Filed memorandum on plaintiff's motion filed 4-8-74. Motion for protctive orders is granted. Submit order on notice. *Lasker,* J. (n/m)
5-9-74	Filed protective order. *Lasker,* J. (n/m)
6-18-74	Filed memorandum #40832—accordingly defendant's motion to dismiss is denied. Plaintiffs' motion to convene a three-judge court is granted. It is so ordered. *Lasker,* J.
6-24-74	Filed designation of Judges to hear and determine application for relief pursuant to 28 U.S.C. 2281 and 2284. . . . designates Hon. Morris E. Lasker and Honorable Wilfred Feinberg, U.S. Circuit Judge. . . . Hon. Richard Owen, U.S.D.J.

Relevant Docket Entries—District Court 74 Civ. 78 Bert Randolf Sugar, et ano. v. Curtis Publishing Co., et al.

Date	Proceedings
6-24-74	Filed order that hearing be held on July 10, 1974 . . . submit all papers as follows . . . plaintiffs by 7-1-74 . . . defendants on 7-8-74. . . . (n/m)
6-25-74	Filed plaintiffs' motion for consolidated hearing pursuant to Rule 65(a)(2) and to serve a supplemental complaint pursuant to Rule 15(d) of the FRCP
7-2-74	Filed plaintiffs' appendix. . . .
7-2-74	Filed plaintiffs' brief. . . .
7-8-74	Filed defendants' memorandum of law. . . .
7-8-74	Filed defendant Attorney General pro se and for defendant Wilson Fine and Beisheim affidavit and notice of motion to dismiss complaint. Returnable 7-10-74
7-9-74	Filed defendants' (Curtis Circulation) memo . . . .
7-10-74	Filed stipulation and order discontinuing action against National Sports Publishing Corp. . . . *Owen,* J.
7-10-74	Filed stipulation and order that answer of Curtis Circulation shall be deemed to be answer of Continental Casualty as well. . . . *Lasker,* J.
7-15-75	Filed supplemental answer of Curtis Circulation and Continental Casualty Co.
8-9-74	Filed stipulation discontinuing action as to defendant National Sports Publishing Corp., only without prejudice and without costs to any of said parties . . . W. *Feinberg,* C.J. & M. *Lasker,* J. and R. *Owen,* J.
10-17-74	Filed three-judge court opinion #41322 . . . we find the challenged provisions unconstitutional to the extent that a New York defendant has no meaningful opportunity to vacate an order of attachment granted ex parte and without prior notice . . . settle order on notice . . . *Feinberg,* C.J., *Lasker,* J., *Owen,* J. (n/m)

Relevant Docket Entries—District Court 74 Civ. 78 Bert Randolf Sugar, et ano. v. Curtis Publishing Co., et al.

Date	Proceedings
11-6-74	Filed judgment . . . . ordered that the Civil Practice Law and Rules of the State of New York, 6201 subsections (4), (5) and (8); as allowed under 6211 is declared unconstitutional and operation . . . are hereby enjoined against plaintiffs. . . . ordered that the herein judgment be stayed on condition that the defendants (one or all) timely file a notice of appeal. . . . *Feinberg,* C.J., *Lasker,* J. and *Owen,* J. Judgment entered Clerk 11-6-74. . . . n/m
11-27-74	Filed defendant New York State's Notice of Appeal. . . . Notices mailed on 11-29-74 to John G. Ledes, Esq., & Young, Sonnenfeld & Busner.
11-29-74	Filed defendants Curtis Circulation Co. & Continental Casualty Company's Notice of Appeal . . .
12-11-74	Filed amendment to three-judge court opinion #41322 . . . m/n

Complaint.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

74 Civil Action No. 78

BERT RANDOLPH SUGAR and WRESTLING REVUE, INC.,

Plaintiffs,

—against—

CURTIS CIRCULATION COMPANY, CONTINENTAL CASUALTY COMPANY, NATIONAL SPORTS PUBLISHING CORPORATION, JOHN J. MCCLOSKEY, SHERIFF OF THE CITY OF NEW YORK, MALCOLM WILSON, GOVERNOR OF THE STATE OF NEW YORK, LOUIS J. LEFKOWITZ, ATTORNEY GENERAL OF THE STATE OF NEW YORK, SIDNEY A. FINE, JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST JUDICIAL DISTRICT and GEORGE BEISHEIM, JR., JUSTICE OF THE SUPREME COURT OF THE STATE OF NEW YORK, NINTH JUDICIAL DISTRICT,

Defendants.

Plaintiffs, Bert Randolph Sugar and Wresting Revue, Inc., by their attorneys, Gabriel I. Levy and John G. Ledes, bring this action against the defendants Curtis Circulation Company, Continental Casualty Company, National Sports Publishing Corporation, John J. McCloskey, Sheriff of the City of New York, Malcolm Wilson, Governor of the State of New York, Louis J. Lefkowitz, Attorney General of the State of New York, Sidney A. Fine, Justice of the Supreme Court of the State of New York, First Judicial Dis-

trict and George Beisheim, Jr., Justice of the Supreme Court of the State of New York, Ninth Judicial Distrtict, for the relief requested herein due to defendants' deprivation of plaintiff's civil rights under color of state law, and demanding a district court of three judges, and trial by jury as to all matters triabe as of right by a jury, respectfully allege as follows:

I.

Type of Proceeding

1. This is a proceeding for a preliminary and permanent injunction restraining the enforcement, operation and execution of certain of the provisions of Article 62 of the Civil Practice Law and Rules of the State of New York, permitting the pre-judgment seizure of property in any action where the plaintiff has demanded and would be entitled to a money judgment against one or more defendants, other than for jurisdictional purposes, upon the grounds that such statute is unconstitutional in that it violates on its face the procedural due process requirements of the Fourteenth Amendment to the Constitution of the United States, by providing for the taking of property prior to notice and hearing.

2. This is a proceeding for a declaratory judgment pursuant to the provisions of Title 28, United States Code, §§- 2201 and 2202, for the purpose of determining whether defendants and each of them, their agents, attorneys, employees and successors on behalf of themselves and the State of New York, may continue to enforce certain provisions of Article 62 of the Civil Practice Law and Rules of the State of New York and continue to deny and deprive the plaintiffs of the possession and beneficial use of certain monies an ddebts belonging to the respective plaintiffs, and being held by the defendants John J. McCloskey,

Sheriff of the City of New York and National Sports Publishing Corporation, respectively, pursuant to an Order of Attachment and levies made thereunder, hereinafter more specifically referred to.

II.

Jurisdiction

3. This proceeding arises under the Fourteenth Amendment to the United States Constitution and the Civil Rights Acts of the United States, Title 42, United States Code § 1983 (R.S.§ 1979) commonly known as the Civil Rights Act of April 20, 1871.

4. Jurisdiction is conferred upon this Court by Title 28, United States Code § 1331(a), § 1343(3) and (4), § 2201 and § 2202, § 2281 and § 2284.

5. The matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs.

6. This proceeding requires the convening of a three-judge court in accordance with Title 28, United States Code, § 2281 and § 2284, because plaintiffs seek to enjoin and restrain the enforcement, operation and execution of a state statute, Article 62 of the Civil Practice Law and Rules of the State of New York, of state-wide, effect, upon the grounds of the unconstitutionality of certain provisions of such statute.

III.

The Plaintiffs

7. The plaintiff, Bert Randolph Sugar (hereinafter referred to as "Sugar") is a citizen of the State of New

York and resides in Chappaqua, in the County of Westchester in the State of New York, being in the Sourthern District of New York and within the jurisdiction of this Court.

8. The plaintiff, Wrestling Revue, Inc. (hereinafter referred to as "Wrestling Revue"), is a corporation created and existing under and by virtue of the laws of the State of New York, and is a citizen of the State of New York, and maintains its principal office in Katonah, in the County of Westchester, in the State of New York, being in the Southern District of New York and within the jurisdiction of this Court.

IV.

The Defendants.

9. The defendant, Curtis Circulation Company (hereinafter referred to as "Curtis") is a corporation created and existing under and by virtue of the laws of the State of Delaware and a citizen thereof. Curtis has been duly authorized by the State of New York to transact business in the State of New York and maintained an office for such purpose in the County, City and State of New York, being within the Southern District of New York and within the jurisdiction of this Court.

10. The defendant, Continental Casualty Company (hereinafter referred to as "Continental Casualty") is a corporation created and existing under and by virtue of the laws of the State of Illinois, and is a citizen thereof. Continental Casualty has been duly authorized by the State of New York to transact business in the State of New York, including the issuance of surety bonds and other types of undertakings in the State of New York and main-

tains an office for such purpose in the County, City and State of New York, being within the Southern District of New York, and within the jurisdiction of this Court.

11. The defendant, National Sports Publishing Corporation (hereinafter referred to as "National Sports") is a corporation organized and existing under and by virtue of the laws of the State of New York and maintains its principal office in the County, City and State of New York, being in the Southern District of New York, and within the jurisdiction of this Court.

12. The defendant, John J. McCloskey (hereinafter referred to as "Sheriff") is the duly appointed Sheriff of the City of New York, in the State of New York and is required by law to execute all lawful mandates and orders of the Courts of the State of New York, within the City of New York, upon the payment of his lawful fees and is an officer of the State of New York.

13. The defendant, Malcolm Wilson is the duly qualified Governor of the State of New York and is charged that the laws of the State of New York are faithfully executed and is made a defendant herein in his capacity of Governor of the State of New York.

14. The defendant, Louis J. Lefkowitz, is the duly elected Attorney-General of the State of New York and is required to defend all actions and proceedings in which the State is interested, including whenever the constitutionality of a state statute is brought into question, and is made a defendant herein in his capacity as Attorney-General of the State of New York.

15. The defendant, Sidney A. Fine (hereinafter referred to as "Mr. Justice Fine") is a duly elected Justice of the

Supreme Court of the State of New York in and for the First Judicial District, which includes the County of New York and is an officer of the State of New York.

16. The defendant, George Beisheim, Jr. (hereinafter referred to as "Mr. Justice Beisheim") is a duly elected Justice of the Supreme Court of the State of New York, in and for the Ninth Judicial District, which includes the County of Westchester and is an officer of the State of New York.

V.

The New York Attachment Statute [Article 62 of the New York Civil Practice Law and Rules]

17. Article 62 of the Civil Practice Law and Rules of the State of New York contains the New York Attachment Statute, §§ 6201 through 6226, the complete text of which is appended to this complaint as Appendix "A".

18. § 6201 inter-~~a~~lia provides that "[a]n order of attachment may be granted in any action, except a matrimonial action, where the plaintiff has demanded and would be entitled in whole or in part, or in the alternative, to a money judgment against one or more defendants" in eight different type situations. Subparagraphs 1, 2, 3 and 7 relate to securing jurisdiction over the defendant and subparagraph 6 relates to the wrongful possession of governmental property and are not involved in this proceeding. The other three subparagraphs 4, 5 and 8 relate to various types of alleged fraud on the part of the defendant and are the specific subject matter of this proceeding.

19. § 6211 which is also the specific subject matter of this proceeding sets forth the required contents of the order

of attachment and provides inter alia "[a]n order of attachment may be granted *without notice,* before or after service of summons and at any time prior to judgment" [Emphasis supplied].

VI.

The Contract Between Wrestling Revue and National Sports

20. On November 28, 1972, as of the 31st day of October, 1972, Wrestling Revue and National Sports entered into a written contract providing for the sale of certain sports publications owned by Wrestling Revue to National Sports for a purchase price of "a minimum of $50,000 and a maximum of $100,000" payable in specified installments. The first installment of $25,000 was paid at the time of the signing of the contract on November 28, 1972. The following two fixed installments of $12,500 each were due and payable on February 28, 1973 and May 28, 1973, respectively. In addition thereto, the contract further provided for additional payments for ten years, based on the after tax profits of National Sports, the total of which were not to exceed $40,000, the first payment due thereunder, if any, is due on March 31, 1974.

21. National Sports failed to make the installment payment of $12,500 due and payable on February 28, 1973 and Wrestling Revue instituted an action as plaintiff and against National Sports, as defendant in the Supreme Court of the State of New York, in and for the County of Westchester, Index Number 6275/1973, as a result of National Sports' breach thereof, by failing to make such installment payment, which action is still pending.

22. As of April 16, 1973, National Sports had failed to make the $12,500 payment to Wrestling Revue due on February 28, 1973 and on such date was indebted to Wrestling Revue in the amount of $12,500. On May 28, 1973, National Sports was further required to make an additional installment payment to Wrestling Revue of an additional $12,500 which it refused and failed to make.

VII.

The Negotiations Between Curtis, National Sports and Wrestling Revue and Their Attorneys

23. Between February 23, 1973 and April 13, 1973, extensive correspondence was had between Curtis and its attorneys and National Sports, its parent company, Whitney Communications Corporation and its attorneys with respect to certain monies that Curtis allegedly claimed were due to it from a company known as Champion Sports Publishing, Inc. (hereinafter referred to as "Champion Sports") for distributing some of the publications sold to National Sports by Wrestling Revue.

24. During such entire period of time the attorneys for both Curtis and National Sports were in constant communication with the law firm of Levy and Ledes the attorneys for both Wrestling Revue and Champion Sports with respect to the alleged claim of Curtis for such monies due to it from Champion Sports.

25. For many months prior to April 13, 1973, Curtis and its attorneys knew that Levy and Ledes were the attorneys for Wrestling Revue, Champion Sports and Sugar, their Chief Executice Officer, and knew that Messrs. Levy and Ledes were available to accept the service of process or appear in court proceedings or at court hearings on behalf of all or some of such clients, as the situation would require.

VIII.

The Deprivation of Plaintiffs' Civil Rights Without Procedural Due Process Under Article 62 of the New York Civil Practice Law and Rules

A.

The Order of Attachment

26. On April 13, 1973, Curtis, prior to the commencement of any action and without notice to Sugar, Wrestling Revue and Champion Sports, or its attorneys, applied to the Supreme Court of the State of New York, County of New York for an order of attachment pursuant to Article 62 of the Civil Practice Law and Rules of the State of New York, directing the Sheriff to levy "upon such property in which Sugar, Wrestling Revue and Champion Sports have an interest and upon such debts owing to them as will satisfy Curtis' demand of $28,588.08 together with probable interest costs and Sheriff's fees and expenses."

27. In support of such application, made in the form of a motion, without notice to Sugar, Wrestling Revue or Champion Sports in an action not then commenced, to be entitled "Supreme Court of the State of New York, County of New York, Curtis Circulation Company, Plaintiff, against Champion Sports Publications, Inc., Wrestling Revue, Inc. and Bert Randolph Sugar, Defendants", Index No. 6102/1973, Curtis contended inter alia "that a cause of action for a money judgment exists in favor of Curtis and against Sugar, Wrestling Revue and Champion Sports, jointly and severally, in the sum of $28,588.08 as well as for other sums, together with interest and costs thereon and that Curtis is entitled to recover said sum of $28,588.08 over and above all counterclaims known to it."

28. Curtis further contended inter alia that it was entitled to an order of attachment against the property of Sugar, Wrestling Revue and Champion Sports on the grounds that:

(a) "Champion Sports has assigned, disposed of or removed property from the State of New York with intent to defraud its creditors" [CPLR § 6201(4)];

(b) "Champion Sports and Sugar, its principal officer, have been guilty of a fraud in contracting or incurring a liability upon an express contract" [CPLR § 6201(5)]; and

(c) "Champion Sports, Sugar and Wrestling Revue are liable to Curtis for damages in a cause of action for fraud and deceit" [CPLR § 6201(8)].

29. In further support thereof Curtis submitted to the Court an undertaking of Continental Casualty "in the sum of $10,000, of which amount the sum of $8,570 thereof is conditioned that Curtis will pay to Champion Sports, Wrestling Revue and Sugar all legal costs and damages which may be sustained by reason of the attachment if Champion Sports, Wrestling Revue and Sugar recover judgment or it is finally decided that Curtis was not entitled to an attachment of the property of Sugar, Wrestling Revue and Champion Sports, and the balance thereof [of $1,430] conditioned that Curtis will pay the Sheriff all of his allowable fees."

30. On April 13, 1973, prior to the commencement of any action, and without notice to Sugar, Wrestling Revue and Champion Sports, or its attorneys, or an opportunity to be heard with respect to the validity of Curtis' underlying claim and Curtis' right to an order of attachment, Mr. Justice Fine pursuant to Article 62 of the Civil Prac-

tice Law and Rules of the State of New York signed an order of attachment wherein he made findings of fact adverse to the interests of Sugar, Wrestling Revue and Champion Sports and "[o]rdered the Sheriff of the City of New York or the Sheriff of any county in the State of New York to levy within his jurisdiction at any time before final judgment upon such property in which Champion Sports, Wrestling Revue and Sugar have an interest and upon such debts owing to them as will satisfy Curtis' demand of $28,588.08, together with probable interest, costs and Sheriff's fees and expenses and that he proceed thereon in the manner required by law," thereby violating the procedural due process rights guaranteed to Sugar, Wrestling Revue and Champion Sports by the Fourteenth Amendment to the Constitution of the United States, by providing for the taking of their property by the State of New York without prior notice and an opportunity to be heard.

B.

The Sheriff's Levy

31. On April 16, 1973, prior to the commencement of any action and without notice to Sugar, Wrestling Revue and Champion Sports or their attorneys, the Sheriff by one of his deputys, caused the order of attachment to be served upon National Sports and levied thereunder upon all monies then due pursuant to § 6214 of the Civil Practice Law and Rules and thereafter coming due to Sugar and Wrestling Revue from National Sports up to the amount of $28,588.08, thereby further violating the procedural due process rights guaranteed to Sugar and Wrestling Revue by the Fourteenth Amendment to the Constitution of the United States, by the Sheriff, on behalf of the State of

New York, taking their property then held by National Sports, without prior notice and an opportunity to be heard.

C.

The Payments of Plaintiffs' Money, by National Sports to the Sheriff

32. On April 26, 1973, National Sports served a Garnishee Statement pursuant to § 6219 of the Civil Practice Law and Rules upon the Sheriff with respect to monies then owed by it to Wrestling Revue pursuant to the agreement referred to in ¶ 20 ante and paid to the Sheriff "$9,323.54, in discharge to the extent of such payment of its obligation to Wrestling Revue with respect to the February 28, 1973 purchase price installment", which monies were the property of, and belonged to Wrestling Revue, and to which it was immediately entitled to the beneficial use thereof.

33. On May 2, 1973, National Sports made a further payment pursuant to the order of attachment and levy to the Sheriff of $200 which monies were the property of and belonged to Wrestling Revue and to which it was immediately entitled to the beneficial use thereof.

34. On May 16, 1973, National Sports made another further payment pursuant to the order of attachment and levy to the Sheriff of $124.17, which monies were the property of and belonged to Sugar and to which he was immediately entitled to the beneficial use thereof.

35. The payments made by National Sports to the Sheriff as set forth in ¶¶ 32, 33 and 34 ante, violated the procedural due process rights of Wrestling Revue and

Sugar guaranteed to them by the Fourteenth Amendment to the Constitution of the United States, by the Sheriff on behalf of the State of New York, taking their property from National Sports, without prior notice and an opportunity to be heard.

D.

The Second Levy

36. As of May 24, 1973, Curtis admitted in the action then pending between it and Sugar, Wrestling Revue and Champion Sports, that the maximum amount that was then due to it from Champion Sports was $17,857.49.

37. Curtis never took the necessary action to reduce the amount of the order of attachment to reflect the reduced amount it claimed as of May 24, 1973.

38. On May 28, 1973, National Sports pursuant to the agreement set forth in ¶ 20 ante was required to make a further installment payment to Wrestling Revue of $12,500 which it refused and failed to make as a result of the order of attachment and Sheriff's levy served upon it on April 16, 1973.

39. On September 24, 1973, the Sheriff re-served the order of attachment upon National Sports and made a second levy again in the amount of $28,588.08, notwithstanding that the maximum amount then claimed by Curtis was only $17,857.49, and of which the Sheriff had already taken possession of $9,647.71 as set forth in ¶¶ 32, 33 and 34 ante, and thereby under color of state law, further violated the procedural due process rights of Wrestling Revue guaranteed to it by the Fourteenth Amendment to the Constitution of the United States by the Sheriff on behalf of the

State of New York, taking the property belonging to Wrestling Revue then held by National Sports without prior notice and an opportunity to be heard.

E.

The Extension of the Second Levy

40. Pursuant to § 6214(b) of the Civil Practice Law and Rules of the State of New York, a levy made under an order of attachment expires ninety days after service thereof and as a result of the refusal and failure of National Sports to pay over to the Sheriff the $12,500 installment due to Wrestling Revue, on May 28, 1973, such second levy made on September 24, 1973 would have expired on December 24, 1973.

41. On December 4, 1973, Curtis, without notice to the attorneys for Sugar, Wrestling Revue and Champion Sports, who had appeared in such action on April 18, 1973 and interposed their answer to Curtis' complaint on April 27, 1973, applied to the Supreme Court of the State of New York, County of Westchester, where the action was then pending, for an order extending the second levy until March 24, 1974.

42. On December 7, 1973, and without notice to Sugar, Wrestling Revue and Champion Sports, or their attorneys, or affording them a prior hearing or an opportunity to be heard with respect to Curtis' application for a ninety day extension of such levy, Mr. Justice Beisheim, pursuant to Article 62 of the Civil Practice Law and Rules of the State of New York, signed an order granting such motion of Curtis and extended such levy to March 24, 1974, with respect to "[a]ll property in the possession or control of National Sports in which Champion Sports, Wrestling

Revue and Sugar have any title or interest" thereby under color of state law further violating the procedural due process rights guaranteed to Sugar, Wrestling Revue and Champion Sports by the Fourteenth Amendment to the Constitution of the United States, by providing for the continued taking of their property by the State of New York, without prior notice and an opportunity to be heard.

IX.

Irreparable Injury and Damages

43. The defendants and each of them, jointly and severally, on behalf of themselves and the State of New York, under color of state law, in violation of the procedural due process requirements of the Fourteenth Amendment to the Constitution of the United States, have unconstitutionally, unlawfully and wrongfully seized and deprived and continue to deprive plaintiffs of their property, and threaten to continue to seize additional property belonging to the plaintiffs and deprive them of the beneficial use and enjoyment thereof, all without prior notice and without affording plaintiffs an opportunity to be heard with respect thereto.

44. Such action on the part of the defendants, hereinbefore alleged, in depriving plaintiffs of their property without prior notice and hearing under color of state law, in violation of the due process requirements of the Fourteenth Amendment to the Constitution of the United States Constitution, if not immediately enjoined and restrained by this Court, will continue to cause great loss and harm and irreparable injury and damage to plaintiffs in that they will continue to be deprived of their lawful interest, title, possession and use in and to the monies heretofore described, belonging to the plaintiffs or to which they are entitled.

45. Plaintiffs are entitled to the immediate use, peaceful possession and exclusive control of the aforementioned money without the unconstitutional interference thereof, by the defendants under color of state law.

46. Plaintiffs have no plain, adequate or complete remedy at law, as hereinafter more particularly set forth.

47. By reason of the aforesaid unconstitutional and wrongful acts on the part of the defendants, plaintiffs have been and will continue to be injured in their business and property in that:

(a) Wrestling Revue has been unable to continue the operation of its business, including the publication of magazines, thereby destroying its reputation in the publishing, sports and business community, and its ability to secure credit financing and money from the banking, financial and business community have been destroyed and Wrestling Revue has further been damaged to an extent presently unknown.

(b) Sugar has been unable to obtain meaningful employment and his outstanding reputation in the sports and publishing community has been destroyed and Sugar has further been damaged to an extent presently unknown.

X.

The Unconstitutionality of Article 62 of the Civil Practice Law and Rules of the State of New York

48. Article 62 of the Civil Practice Law and Rules of the State of New York, and most particularly § 6201, subparagraphs (4), (5) and (8) and § 6211, insofar as it permits the pre-judgment seizure of property in any action where the plaintiff has demanded and would be entitled to a

money judgment against one or more defendants, without prior notice or hearing is unconstitutional on its face and void as repugnant to and in violation of the due process provisions of subparagraph 1 of the Fourteenth Amendment to the Constitution of the United States since on its face it fails to provide for prior notice and hearing which are aimed at establishing the validity or at least the probable validity of the underlying claim against the alleged debtors before they can be deprived of the unrestricted use of their property or property to which they are entitled and constitutes the deprivation of plaintiff's property, by the State of New York without due process of law.

49. The acts of the defendants and each of them, jointly and severally create an existing dispute between the parties as to plaintiffs' legal rights amounting to a justicable controversy which must be determined by a district court of three judges as required by Title 28, United States Code § 2281, which must be impaneled for this controversy since it seeks an interlocutory and permanent injunction restraining the enforcement, operation and execution of a state statute by restraining the action of officers and officials of the State of New York and others in the enforcement, operation and execution of certain portions of Article 62 of the Civil Practice Law and Rules of the State of New York, upon the grounds of the unconstitutionality thereof.

50. Plaintiff's are entitled to maintain this action and to obtain the relief herein requested from this Court and cannot be required to have recourse for such relief to the Courts of the State of New York, which have recently refused in a justicable controversy to rule on the unconstitutionality of the very provisions of Article 62 of the Civil Practice Law and Rules of the State of New York [§§ 6201 (8), 6211] which are the subject matter of this proceeding,

even assuming contrary to the facts, that the Courts of the State of New York have jurisdiction to grant such relief and that the New York statutes afford plaintiffs an adequate remedy in such courts for the following reasons:

(a) The Federal Constitutional rights for which plaintiffs ask the protection of this Court in this proceeding are based solely upon the provisions of the Fourteenth Amendment to the Constitution of the United States that "[n]o state shall • • • deprive any person of life, liberty or property without due process of law;" with which Article 62 of the Civil Practice Law and Rules of the State of New York [§ 6201 and § 6211] and the defendants' acts herein set forth are in direct conflict and upon specific paramount considerations of Federal, not State policy which can only be adequately and fully determined and protected by a Federal Court.

(b) Denial of plaintiffs' right of access to this Court would deprive plaintiffs of their right to a prompt and expeditious determination of the Federal Constitutional issues involved. Such denial would subject the plaintiffs to the added unnecessary delay and expenses of a costly, protracted and futile litigation through all the Courts of the State of New York, which have heretofore refused to decide the constitutionality of the very state statute involved, only to be finally resolved in the end by a decision of the Supreme Court of the United States.

(c) Plaintiff has no adequate remedy, other than the equitable relief and the redress to which it is entitled to pursuant to Title 28, United States Code § 1983 sought from this Court in the within proceeding.

XI.

Prayer for Relief

WHEREFORE, plaintiffs, Bert Randolph Sugar and Wrestling Revue, Inc. pray for equitable and legal relief against the defendants and each of them, jointly and severally, as follows:

1. That pursuant to the provisions of Title 28, United States Code, §§ 2281 and 2284, a three-judge court be convened forthwith as required therein, to hear and determine the issues herein since the provisions of Article 62 of the Civil Practice Law and Rules of the State of New York, and most particularly § 6201 subparagraphs (4), (5) and (8) and § 6211 insofar as it permits the prejudgment seizure of property in any action where the plaintiff has demanded and would be entitled to a money judgment against one or more defendants, without prior notice or hearing is unconstitutional and void as repugnant to the due process provisions of subparagraph 1 of the Fourteenth Amendment to the Constitution of the United States.

2. That this Court hold and adjudge that as applied to the plaintiffs, Article 62 of the Civil Practice Law and Rules of the State of New York and most particularly § 6201, subparagraphs (4), (5) and (8) and § 6211 and all other provisions thereunder which would affect the order of attachment and levies relating to the property of the plaintiffs and debts due to them herein, insofar, as it permits the pre-judgment seizure of property and debts in any action where the plaintiff has demanded and would be entitled to a money judgment against one or more defendants, without prior notice or hearing is unconstitutional and void on its face as being repugnant and contrary to the due process provisions of subparagraph 1 of the Fourteenth Amendment to the Constitution of the

United States, which provides that "[n]o state shall • • • deprive any person of life, liberty or property, without due process of law."

3. That this court issue an injunction both preliminary and permanent, enjoining the defendants and each of them, jointly and severally, and all of their attorneys, officers, agents, employees and representatives from enforcing, attempting to enforce, continuing to enforce or attempting to put into execution or in any way as against the plaintiffs and restraining the enforcement, operation and execution of, the provisions of Article 62 of the Civil Practice Law and Rules of the State of New York and most particularly § 6201, subparagraphs (4), (5) and (8), and § 6211 and all other provisions thereunder, which would affect the order of attachment and levies relating to the property and debts belonging to the plaintiffs herein.

4. That pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure the trial of this proceeding on the merits be advanced and consolidated with the hearing of the application for a preliminary injunction and pursuant to Title 28, United States Code § 2284 such consolidated hearing and trial be given precedence and assigned for a hearing and trial at the earliest practicable date.

5. Directing and ordering the Sheriff of the City of New York to forthwith pay over and to deliver to the plaintiffs all monies and other property in his custody and possession received by him pursuant to the order of attachment and levies made thereunder, with lawful interest thereon, without any deduction for any fees, costs or expenses.

6. Directing and ordering National Sports Publishing Corporation to forthwith pay over and deliver to the plain-

tiffs all monies to which each of the plaintiffs is legally entitled to receive from National Sports Publishing Corporation.

7. Referring the amount of plaintiffs' damages to a single district judge for hearing and determination:

(a) That plaintiffs recover from such of the defendants and each of them, jointly and severally, in accordance with Title 42, United States Code § 1983, all damages including attorneys fees that each of them have sustained or will hereafter sustain as a result of the acts of each of such defendants, which deprived the respective plaintiffs of their civil rights under color of state law.

(b) That plaintiffs recover from such of the defendants and each of them, jointly and severally who may be liable to them, all damages, including attorneys fees, that each of them have sustained or will hereafter sustain as a result of the fact that Curtis Publishing Company was not entitled to an attachment of the property of the plaintiffs, or either of them;

(c) That plaintiffs recover from such of the defendants, and each of them, jointly and severally, who may be liable to them, as a result of the wilfull, wrongful and unconstitutional acts of such defendants, which deprived the respective plaintiffs of their civil rights, under color of state law, exemplary and punitive damages, in such amounts as shall be determined by the Court.

8. That Bert Randolph Sugar and Wrestling Revue, Inc. prays for such other, further, different and separate relief as to the Court may seem just and proper in the premises and if they have not prayed for proper and sufficient relief, then for such other further and general relief as to which

they may be entitled, together with their costs and disbursements.

Dated: New York, New York
January 2, 1974

GABRIEL I. LEVY
GABRIEL I. LEVY
JOHN G. LEDES
JOHN G. LEDES
of the firm of LEVY AND LEDES
Attorneys for Plaintiffs
270 Madison Avenue
New York, New York 10016
(212) 371-8000

Exhibit "A".

Civil Practice Law and Rules Article 62 (Attachment)
(Reproduced at Jurisdictional Statement 1a)

Answer (Curtis Circulation Company).

[SAME TITLE]

Defendant, Curtis Circulation Company, by its attorneys, Young, Sonnenfeld & Busner, answering the complaint, respectfully alleges as follows:

1. On information and belief, denies the allegations contained in paragraphs 1 and 2 of the complaint.

2. With respect to paragraph 3 of the complaint, on information and belief, denies any jurisdiction by this Court by virtue of the Fourteenth Amendment of the United States Constitution or the Civil Rights Act of the United States, Title 42 United States Code, Section 1983.

3. On information and belief, denies the allegations contained in paragraphs 4, 5 and of the complaint.

4. Denies knowledge or information sufficient to form a belief with respect to the allegations contained in paragraphs 7, 8, 10 and 11 of the complaint.

5. With respect to paragraph 20 of the complaint, on information and belief, Wrestling Revue had no legal right to enter into the purported written contract therein referred to, was not the owner of the publications allegedly sold thereby, the alleged sale was fraudulent and contrived to deprive the creditors of Champion Sports Publishing Inc., including Curtis, of their just claims against said corporation; with respect to the alleged terms of said purported written contract, the Court is referred to said instrument and the legal effect thereof; and except as herein alleged the defendant Curtis denies knowledge or information sufficient to form a belief with respect to the allegations contained in said paragraph of the complaint.

Answer (Curtis Circulation Company).

6. With respect to paragraphs 21 and 22 of the complaint, on information and belief, admits that National did not make the payments referred to therein; on information and belief there were no payments legally due and owing to the plaintiffs by virtue of the invalidity of the purported underlying contract; admits that Wrestling commenced the action therein referred to and that the same is now pending; and except as herein alleged, on information and belief, denies the allegations contained in said paragraphs of the complaint.

7. With respect to paragraph 23 of the complaint, on information and belief, denies that any of the publications referred to were legally sold by Wrestling Revue to National Sports; admits that there was correspondence between Curtis and its attorneys and National Sports and Whitney Communications Corporation and its attorneys with respect to moneys claimed by Curtis from Champion for distributing publications represented to Curtis as being owned by Champion; and except as herein alleged, denies the allegations contained in said paragraph of the complaint.

8. With respect to paragraph 24 of the complaint, admits that during the period specified the attorneys for Curtis and National Sports were in communication with the law firm of Levy and Ledes with respect to the Curtis claim for moneys due from Champion Sports and, except as herein admitted, denies the allegations contained in said paragraph of the complaint.

9. With respect to paragraph 25 of the complaint, admits that prior to April 13, 1973, Curtis and its attorneys were aware that Levy and Ledes had represented Champion Sports, had acquired information from others that said law firm had represented Wrestling Revue and

Champion Sports in transactions involving the purported sale of publications by Wrestling Revue to third parties, which publications had previously been represented to Curtis as being owned by Champion and except as herein admitted, denies the allegations contained in said paragraph of the complaint.

10. With respect to the allegations contained in paragraph 26 of the complaint, admits that prior to April 13, 1973, Curtis applied to the Supreme Court of the State of New York, County of New York for an order of attachment pursuant to Article 62 of the Civil Practice Law and Rules of the State of New York for the relief specified in said paragraph of the complaint (albeit not in the language quoted in the said paragraph of said complaint); that said application in accordance with the said Article 62 was based upon filing with said court of a summons and verified complaint, an affidavit showing grounds for such attachment pursuant to said Article 62 and an undertaking conditioned that Curtis would pay to Champion, Wrestling Revue and Sugar all legal costs and damages which they might sustain by reason of the attachment; that said application was based upon facts which had come to the attention of Curtis, to wit, *inter alia,* that Sugar, Champion and Wrestling without notice to Curtis had purportedly caused Champion to divest itself of the publications which it had represented to Curtis were owned by it, that Wrestling was purportedly claiming title to such publications pursuant to a purported license agreement which had never been revealed to Curtis, that Wrestling had purported to sell such publications to third parties and claimed to be entitled to the proceeds of such sale, that no monies from such sale would flow to Champion and that Champion would be unable by virtue of allegedly having no assets to make payment to Curtis of its claim against Champion; that said

application was based upon facts which were clearly indicative of a fraudulent scheme to remove the assets of Champion beyond the reach of its creditors including Curtis; that the facts alleged on said application clearly indicated that Sugar and Wrestling had no legal right to the proceeds of said sale and that whatever rights Champion might have to such proceeds were restricted to its role as a trustee for its creditors; that the rights of the respective parties, including Curtis, in and to the proceeds of said purported sale required determination by a Court of law and that until such rights were determined, such proceeds should be immunized from dissipation by any one of the claimants; that said order of attachment was made by said Court on April 13, 1973; that said application was made ex parte under the authority of the said Article 62 in order to prevent dissipation of the fund by any claimant to the detriment of others; and except as herein alleged, Curtis denies the allegations contained in said paragraph of the complaint. The order of attachment and the papers in support thereof, including the verified complaint, are annexed hereto as Appendix A.

11. With respect to paragraph 27 of the complaint, Curtis repeats and realleges the allegations contained in paragraph 10 of this answer, admits the title of the action set forth in said paragraph of the complaint and the index number thereof; denies that Curtis made the contention claimed in said paragraph of the complaint in the language quoted therein, albeit said language does appear as a recitation in the order of attachment issued by the Court; and except as herein alleged, denies the allegations of said paragraph of the complaint.

12. With respect to paragraph 28 of the complaint, denies that Curtis made the contentions in the language quoted in said paragraph of the complaint, albeit such lan-

guage, in substance, is contained in the order of attachment made by said Court, excluding the Civil Practice Law and Rules sections set forth in brackets in said paragraph of the complaint.

13. With respect to paragraph 29 of the complaint, admits that Curtis submitted the undertaking of Continental Casualty in the amount set forth; admits that the language quoted in said paragraph of said complaint is, in substance, contained in the order of attachment made by the Court; and except as herein alleged, denies the allegations of said paragraph of the complaint.

14. With respect to paragraph 30 of said complaint, repeats and realleges the allegations contained in paragraph 10 of this answer; admits that on April 13, 1973, Mr. Justice Fine, pursuant to Article 62 of the Civil Practice Law and Rules of the State of New York, signed the order of attachment; admits that the said order, *inter alia,* contained, in substance, the language quoted in said paragraph of the complaint, and except as herein alleged, denies the allegations of said paragraph of the complaint.

15. With respect to the allegations contained in paragraph 31 of the complaint, repeats and realleges the allegations contained in paragraph 10 of this answer, upon information and belief, admits that on or about April 16, 1973, one of the deputies of the sheriff served a copy of the order of attachment upon National Sports; respectfully refers the Court to the legal effect of said service; and except as herein alleged, denies the allegations contained in said paragraph of the complaint.

16. With respect to paragraph 32 of the complaint, on information and belief, admits that on or about April 26, 1973 National Sports served a Garnishee Statement pur-

suant to Section 6219 of the Civil Practice Law and Rules upon the sheriff and respectfully refers the Court to the contents thereof; on information and belief, admits that National Sports paid over to the sheriff the sum of $9,323.54; on information and belief admits that said Garnishee Statement, *inter alia,* contains, in substance, the language quoted in said paragraph 32 of the complaint; and except as herein alleged, on information and belief, denies the allegations contained in said paragraph of the complaint.

17. With respect to paragraph 33 of the complaint, on information and belief, admits that National Sports made payment to the sheriff of $200 on May 2, 1973 and, on information and belief, denies the remaining allegations of said paragraph of the complaint.

18. With respect to paragraph 34 of the complaint, admits on information and belief that National Sports made payment to the sheriff of $124.17 on May 16, 1973 and, on information and belief, denies the remaining allegations contained in said paragraph of the complaint.

19. Denies the allegations contained in paragraphs 35 and 36 of the complaint.

20. With respect to paragraph 37 of the complaint, repeats and realleges the allegations contained in paragraph 19 of this answer and denies that any action was necessary as alleged in said paragraph 37 of the complaint.

21. With respect to paragraph 38 of the complaint, denies knowledge or information sufficient to form a belief whether the purported agreement required National Sports to make any payment on May 28, 1973; denies the legality of the purported agreement; and, on information and be-

lief, denies that any refusal by National Sports to make payment resulted from the order of attachment or the sheriff's levy.

22. With respect to paragraph 39 of the complaint, on information and belief, admits the sheriff served another copy of said order of attachment upon National Sports on September 24, 1973; on information and belief, admits that the sheriff had already taken into possession certain monies pursuant to the order of attachment but denies knowledge or information sufficient to form a belief with respect to the exact amount that the sheriff took into possession; and except as herein alleged, denies the allegations contained in said paragraph of the complaint.

23. With respect to the allegations contained in paragraph 40 of the complaint, denies that 6214(b) of the Civil Practice Law and Rules of the State of New York has the effect attributed to it in said paragraph of the complaint and respectfully refers the Court to the contents of such section; and denies the remaining allegations contained in said paragraph of the complaint.

24. With respect to the allegations contained in paragraph 41 of the complaint, admits that on or about December 4, 1973, Curtis hade an ex parte application for an order extending the time of National Sports to March 24, 1974 to pay, transfer or deliver property covered by the order of attachment in its possession or control pursuant to 6214(b) of the Civil Practice Law and Rules of the State of New York; admits that the attorneys for the defendants in said action in the Supreme Court of the State of New York appeared in such action on April 18, 1973, and interposed their answer on April 27, 1973; admits that the action was then pending in the Supreme Court of the State of

New York, County of Westchester; and except as herein alleged, denies the allegations of said paragraph of the complaint.

25. With respect to paragraph 42 of the complaint, admits that on or about December 7, 1973, an ex parte order was signed by Mr. Justice Beisheim, pursuant to Article 62 of the Civil Practice Law and Rules of the State of New York, granting the relief requested by Curtis; admits that such order contained, in substance, the language quoted in said paragraph of the complaint; and, except as herein alleged, denies the allegations contained in said paragraph of the complaint.

26. Denies the allegations contained in paragraphs 43, 44, 45, 46, 47, 48, 49 and 50 of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

27. There is a prior action pending in the Supreme Court of the State of New York referred to in these pleadings, to which Curtis and the plaintiffs are parties.

28. In said prior action and pursuant to the laws of the State of New York, and particularly Article 62 of the Civil Practice Law and Rules, the plaintiff can summarily obtain the relief they seek in this action.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

29. Plaintiffs have an adequate remedy at law which they can summarily obtain in said pending prior action pursuant to the laws of the State of New York and particularly Article 62 of the Civil Practice Law and Rules.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

30. The complaint fails to state a claim upon which relief can be granted by this Court.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

31. The Court lacks jurisdiction over the subject matter contained in the complaint and cannot grant the relief sought therein, *inter alia,* on grounds of well settled principles of equity, comity and federalism.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

32. On information and belief, the plaintiffs come before this Court seeking equitable relief with unclean hands having entered into a conspiracy to defraud the defendant Curtis from its just claim against Champion by joining in a scheme to deprive Champion of assets held by it as trustee for its creditors among whom is Curtis.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

33. On information and belief, the plaintiffs have no interest in or valid claim to the property taken into possession by the Sheriff of the County of New York pursuant to the order of attachment issued in said state action and have no standing to sue as persons allegedly deprived of property without due process under the Fourteenth Amendment to the Constitution of the United States.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

34. Subdivisions (4), (5) and (8) of Section 621 of the New York Civil Practice Law and Rules, each of which sub-

divisions was the basis upon which the Supreme Court of the State of New York issued said order of attachment, provide for the attachment of property upon circumstances, each of which are wholly consistent with due process of law pursuant to the Fourteenth Amendment to the United States Constitution.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

35. Plaintiffs are estopped from challenging the validity of said attachment by virtue of diverse affirmative acts taken by them in said pending state action including, *inter alia,* a motion to consolidate said action with another action pending in Westchester County and for change of venue of said consolidated action to Westchester County and the noticing and taking of the deposition of the defendant Curtis, without challenging the validity or propriety of said order of attachment in said pending state action.

36. The said state action has been pending for ten months, during which time plaintiffs have failed to challenge or move to vacate said attachment.

37. On information and belief, during said ten month period other creditors of Champion have made claims against Champion.

38. On information and belief, if plaintiffs had timely moved to vacate said order of attachment in said state action, and if the motion had been granted, defendant Curtis would have had an opportunity to obtain a new order of attachment on notice which order of attachment would have had priority over the claims of other creditors of Champion.

39. On information and belief, if the present order of attachment is vacated, or enforcement thereof enjoined,

other creditors of Champion may obtain an order of attachment which will have priority over any order of attachment which defendant Curtis would be able to obtain.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

40. Defendant Curtis repeats and realleges the allegations contained in paragraphs 35 through 39, inclusive, of this answer.

41. Plaintiffs have waived any and all rights which they might otherwise have had to challenge the validity of said order of attachment.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

42. Defendant Curtis repeats and realleges the allegations contained in paragraphs 35 through 39, inclusive, of this answer.

43. Plaintiffs have been guilty of laches.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

44. On information and belief, prior to the commencement of the State action by Curtis and the issuance of the order of attachment therein, the defendant National, upon being apprised of the Curtis claim, refused to make payment to the plaintiffs pursuant to the purported agreement set forth in the complaint and assumed the position of a stakeholder with respect to such payments.

45. Thereafter, on March 5, 1973, and still prior to the commencement of the State action by Curtis and the issuance of the order of attachment therein, Wrestling

commenced an action in the Supreme Court of the State of New York, County of Westchester, against National, *inter alia,* to recover such monies from National.

46. It was only after such refusal by National to make such payments and the institution of such action by Wrestling against National to collect such payments, that Curtis instituted its State action wherein the order of attachment was issued.

47. Thus, at the time the order of attachment issued, the plaintiffs could not have obtained possession of said monies, in any event, unless and until they obtained a favorable judicial determination of their claim, by virtue of National's prior decision to retain such monies as stakeholder until such determination.

48. By virtue of the foregoing, the order of attachment was surplusage in terms of the plaintiffs' rights to possession of such monies, as National had made a prior determination to withhold such monies until a judicial determination and had the attachment not issued, National would have retained such monies as stakeholder until such determination.

49. In view of National's prior determination to retain such monies as stakeholder, any vacation of the attachment would require a return of such monies to National as such stakeholder, and not to plaintiffs, thereby rendering the issues raised in this action moot; National's answer in this action demands alternatively the return of the monies paid over by National and presently held by the Sheriff.

50. By virtue of the foregoing, the order of attachment did not deprive the plaintiffs of any property.

Answer (Curtis Circulation Company).

51. The New York Supreme Court action brought by Wrestling against National in Westchester County recognizes and acknowledges that plaintiffs had no immediate right to possession of said monies and could only obtain that right by a judicial determinatoin in said action.

52. Plaintiffs further acknowledged that such a judicial determination in turn requires a determination of the Curtis claim in such monies as evidenced by a motion made by Wrestling in said pending State action in Westchester County on May 8, 1973, in which Wrestling moved to consolidate its action against National in Westchester County with the Curtis action (which motion for consolidation was granted on September 25, 1973).

53. In its motion papers on said motion for consolidation, Wrestling asserted to the Court:

> "Thus, the primary issue of law and fact presented to the Court in the action brought by Wrestling against National relates to its right of offset for the claim asserted by Curtis. . . ."

54. By virtue of the foregoing, the plaintiffs would have had no right to possession of said monies, whether an order of attachment issued or not, unless and until they obtained a favorable determination in the pending State Court actions of their claims therein made.

WHEREFORE, defendant Curtis demands judgment dismissing the complaint together with the costs and disbursements of this action.

Dated: New York, New York, January 31, 1974.

PHILIP H. BUSNER
of the firm of
YOUNG, SONNENFELD & BUSNER
Attorneys for Defendant
Curtis Circulation Company

Order of Attachment.

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, Borough of Manhattan, City, County and State of New York, on the 13th day of April, 1973.

Present: HON. SIDNEY A. FINE, Justice.

Index No. 6102—73

CURTIS CIRCULATION COMPANY,

Plaintiff,

against

CHAMPION SPORTS PUBLICATIONS, INC., and WRESTLING REVUE, INC., and BERT RANDOLPH SUGAR,

Defendants.

A motion having been made by the plaintiff for an order of attachment against the property of the defendants, Champion Sports Publications, Inc., Wrestling Revue, Inc. and Bert Randolph Sugar, in the within action in this Court,

Now, on reading and filing the summons and verified complaint herein, the affidavit of Stuart J. Freedman, sworn to the 29 day of March, 1973, wherein it appears that a cause of action for a money judgment exists in favor of the plaintiff against the defendants jointly and severally in the sum of $28,588.08, as well as for other sums, together with interest and costs thereon, and that the plaintiff is

entitled to recover said sum of $28,588.08 over and above all counterclaims known to it;

And it being further shown by said affidavit that the plaintiff is entitled to an order of attachment against the property of the defendants on the ground that the defendant Champion Sports Publications, Inc. has assigned, disposed of or removed property from the State with intent to defraud its creditors; that the defendant Champion Sports Publications, Inc. and its principal officer, the defendant Bert Randolph Sugar, have been guilty of a fraud in contracting or incurring a liability upon an express contract; the defendants Champion Sports Publications, Inc., Bert Randolph Sugar and Wrestling Revue, Inc. are liable to the plaintiff for damages in a cause of action for fraud and deceit; and the plaintiff has submitted the undertaking required by law herewith;

Now, on motion of Young, Sonnenfeld & Busner, attorneys for the plaintiff, it is

ORDERED, that the plaintiff's undertaking be and the same is hereby fixed in the sum of $10,000, of which amount the sum of $8,578 thereof is conditioned that the plaintiff will pay to the defendants Champion Sports Publications, Inc., Wrestling Revue, Inc. and Bert Randolph Sugar all legal costs and damages which may be sustained by reason of the attachment if the said defendants recover judgment or it is finally decided that the plaintiff was not entitled to an attachment of the defendants' property, and the balance thereof conditioned that the plaintiff will pay the Sheriff all of his allowable fees, and it is further

ORDERED that the Sheriff of the City of New York or the Sheriff of any county in the State of New York levy within his jurisdiction, at any time before final judgment, upon

such property in which said defendants Champion Sports Publications, Inc., Wrestling Revue, Inc. and Bert Randolph Sugar have an interest and upon such debts owing to said defendants as will satisfy the plaintiff's demand of $28,588.08, together with probable interest costs and Sheriff's fees and expenses and that he proceed hereon in the manner required by law.

Enter within ten days

SAF
J.S.C.

Affidavit of Stuart J. Freedman, in Support of Application for an Order of Attachment.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

STUART J. FREEDMAN, being duly sworn, deposes and says:

1. Your deponent is Corporate Secretary of the plaintiff in the above entitled action and makes this affidavit in support of an application for an order of attachment pursuant to CPLR § 6201(4)(5) and (7) against the defendants jointly and severally on the grounds that said defendants have committed frauds upon the plaintiff as alleged in the verified complaint annexed hereto and made part hereof.

2. The plaintiff is a Delaware corporation engaged in the business of distributing publications in the State of New York and elsewhere and did enter into a Distribution Agreement in August 1971 to distribute publications owned and published by the defendant Champion Sports Publishing Inc. (hereinafter referred to as "Champion").

3. Said Distribution Agreement provided for payment of advances to Champion and these advances were secured by the following quoted provision contained in the Distribution Agreement:

> "If, for any reason, Curtis makes an over payment to Publisher on any one publication or issue it distributes for Publisher, such over payment may be deducted by Curtis from any subsequent payment due on any publication or issue which Curtis may distribute for Publisher."

A true copy of the Distribution Agreement is Exhibit 1 to the complaint, a copy of which complaint is annexed hereto.

4. Pursuant to the Distribution Agreement, the plaintiff between August 1971 and December 1972 had advanced sums of money to Champion well in excess of $100,000 and did distribute the publications of the defendant Champion.

5. The next succeeding paragraphs 6, 7 and 8 are alleged upon information and belief. The basis for such information and belief is set forth in paragraph 10 below.

6. The defendant, Bert Randolph Sugar (hereinafter referred to as "Sugar"), who was the principal shareholder and officer of defendant Champion, caused the defendant Champion and another corporation owned and controlled by Sugar, Wrestling Revue, Inc. (hereinafter referred to as "Wrestling"), to embark upon a course of

action in November 1972 for the purpose of defrauding the plaintiff of its rights under the Distribution Agreement and of its rights as a creditor for moneys due to the plaintiff from Champion by reason of advances made by plaintiff to Champion.

7. Pursuant to the plan and course of action, the defendants Sugar, Champion and Wrestling caused six of the publications that were subject to the Distribution Agreement to be transferred by Champion for no consideration to the defendant Wrestling in November 1972. Wrestling then sold the six publications to an independent third party for a valuable consideration and none of this consideration was paid to the defendant Champion.

8. The transfer of the six publications by Champion was accomplished through an alleged license agreement between Champion and Wrestling. The license agreement was supposedly created in 1971, prior to the date that plaintiff entered into the Distribution Agreement with Champion. Under the license agreement, Wrestling granted to Champion the right to publish various periodicals created by the defendant Sugar. In the event that certain royalties were not paid then Wrestling had the right to terminate the license arrangement. Wrestling, in order to make the sale of the six publications, terminated the license agreement with Champion on the ground that Champion had not paid its license fees.

9. It is believed that the license agreement between Champion and Wrestling was either a contrivance that did not exist prior to November 1972 or if the license agreement did exist prior to that time, then the defendants had deliberately and fraudulently concealed such licensing arrangement from the plaintiff until recently when the plaintiff learned of the circumstances pertaining to the sale of

the six publications by Wrestling to the independent third party known as National Sports Publishing Corporation (hereinafter referred to as "National"). If the license agreement was first created in November 1972, its purpose was to defraud the rights of the plaintiff as a creditor and to avoid the Distribution Agreement. If the license agreement was in fact in existence prior to November 1972 and prior to August 1971, then such license agreement of necessity would have been required to be disclosed to the plaintiff by the defendants and their failure to disclose was a fraud upon the plaintiff. The defendants should now be estopped from asserting such a license arrangement. Plaintiff as a distributor entered into the Distribution Agreement in August 1971 on the premise that it had an exclusive arrangement to distribute the publications and that it would be able to recoup its large advances from Champion of future publication distributions.

10. The basis for the statements set forth in paragraphs 6, 7 and 8 above are as follows:

(a) National, the firm that purchased the six publications, advised plaintiff of the alleged license agreement when your deponent and plaintiff's counsel met with an officer and the attorneys for National on March 2, 1973. At this meeting, National's representatives stated there was a license agreement between Wrestling and Champion. They, however, did not produce copies for your deponent or his attorney to review.

(b) National's representatives at this meeting of March 2, 1973 also indicated that all moneys and other considerations were paid either to Wrestling or Sugar and nothing went to Champion.

(c) Defendant Champion in or about October 1972 granted a security interest in two of Champion's more successful publications entitled "Wrestling Monthly" and

"Boxing Illustrated" to Champion's printer, Montreal Offset Press (hereinafter referred to as "Montreal") to secure Champion's indebtedness to Montreal for printing costs. According to information received in February and March 1973 from Montreal's officers and attorneys and from the officers and attorneys of Montreal's parent company, Quebecor Ltd., Champion assigned all of its rights to the two publications to Quebecor Ltd. in the latter part of January 1973 in cancellation of the indebtedness to Montreal for printing costs.

(d) Plaintiff has been unable to locate any other assets and knows of no other viable assets of Champion other than the six publications that were assigned to National and the two publications that were assigned to Montreal's parent company, Quebecor.

11. As of February 28, 1973 the plaintiff has made advance payments to Champion of which the sum of $28,588.08 has not been recouped by the plaintiff from the distribution of publications by the defendant Champion. Annexed hereto and made part hereof as Exhibit 2 is a schedule of all payments made and not recouped through February 28, 1973 prepared by the Treasurer of the plaintiff. It is for this amount that an order of attachment is now being sought. In addition there are other damages which at the present time have not been liquidated, as alleged in the *ad damnum* clause to the complaint. The plaintiff reserves the right to apply for a further attachment for additional sums upon liquidation of those claims.

12. It is thus seen from the allegations in the complaint that defendants have committed the following acts entitling the plaintiff to an attachment under § 6201(4)(5) and (7):

(a) as principal officer and stockholder of defendant Champion, defendant Sugar wrongfully allowed the plain-

Affidavit of Stuart J. Freedman, in Support of Application for an Order of Attachment.

tiff to enter into a contract with defendant Champion while fraudulently failing to disclose the existence of a license agreement with defendant Wrestling if same in fact did exist and personally affirmatively misrepresenting defendant Champion's ownership rights in the publications that were the subject of and purpose of the Distribution Agreement;

(b) If the license agreement did not in fact exist prior to November 1972, then the defendants fraudulently contrived such a license arrangement to deprive plaintiff of its rights under the Distribution Agreement with Champion;

(c) the transfer of the only valuable assets of defendant Champion to defendant Wrestling without payment of present valuable consideration for purposes of defrauding plaintiff of its rights as a creditor is in violation of Article 10 of the Debtor and Creditor Law of New York.

13. No previous application has been made for the relief requested herein.

WHEREFORE, your deponent prays for an order of attachment against the assets of each of the defendants in the form annexed hereto.

Sworn to before me this
29 day of March, 1973.

STUART J. FREEDMAN

ARTHUR SCHEIUER
Notary Public, State of New York

No. (illegible)
Qualified in Queens County
Commission Expires March 30, 1974

Verified Complaint.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

[SAME TITLE]

The plaintiffs, Curtis Circulation Company, complaining of the defendants by its attorneys, Young, Sonnenfeld & Busner, alleges as follows:

AS AND FOR A FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS

1. At all times hereinafter mentioned, plaintiff is and was a corporation duly organized under the laws of the State of Delaware, having offices in the City, County, and State of New York, and engaged in the business of distributing publications in this State and in various states of the United States.

2. Upon information and belief, at all times hereinafter mentioned, defendant Champion Sports Publications, Inc. (hereinafter referred to as "Champion") is a New York corporation having its place of business in Pleasantville, New York, and engaged in the business of publishing magazines, newspapers and periodicals whose subject matter pertains to sports and directed towards a readership interested in sports. The following are titles of some of the magazines, newspapers and periodicals published by Champion:

The Basketball News
Basketball's Best (Pro and College)
Gridiron
Gridiron Year Books (Pro and College)
Who's Who in Pro Football

Verified Complaint.

Who's Who in Pro Basketball
Wrestling Monthly
Boxing Illustrated

3. Upon information and belief, at all times hereinafter mentioned, defendant Wrestling Revue, Inc. (hereinafter referred to as "Wrestling") is a corporation organized under the laws of the State of New York, whose place of business is unknown to plaintiff.

4. Upon information and belief, the individual defendant Bert Randolph Sugar (hereinafter referred to as "Sugar") is the principal stockholder, directly or indirectly, of defendants Champion and Wrestling and is the principal officer of defendants Champion and Wrestling.

5. In August 1971, plaintiff and defendant Champion entered into a contract denominated "Single Copy Distribution Agreement," a true copy of which agreement is annexed hereto and made part hereof as Exhibit 1 (and hereinafter referred to as "Distribution Agreement").

6. Under the terms of the Distribution Agreement, defendant Champion granted to plaintiff the exclusive right for a period of five years to distribute the publications listed in a separate memorandum agreement that the plaintiff and defendant Champion had agreed and executed, and such other publications as the parties should mutually agree to be covered by said Distribution Agreement in separate memoranda agreements.

7. Pursuant to the terms of the Distribution Agreement, in or about September 1971, plaintiff began distributing the publications covered thereunder and made advances of money to defendant Champion as well as other payments, as provided in said Distribution Agreement.

Verified Complaint.

8. By September 1972, plaintiff had advanced sums in excess of $100,000 to Champion, which moneys were not recouped from the distribution made pursuant to the Distribution Agreement.

9. Under the terms of the Distribution Agreement plaintiff had an absolute right of reimbursement for advances made with reimbursement assured to plaintiff not only by Champion's contractual obligation but also secured by plaintiff's right to apply proceeds from any future distribution of Champion's publications.

10. Upon information and belief, sometime in November 1972 defendant Sugar in concert with the other defendants Champion and Wrestling for the purpose of avoiding Champion's liability to plaintiff under the Distribution Agreement embarked upon the following plan and course of action in contravention to the rights of the plaintiff under the Distribution Agreement:

(a) Upon information and belief, defendant Sugar contrived a license agreement between defendant Wrestling, as licensor, and defendant Champion, as licensee, with respect to the following publications:

Basketball News
Basketball's Best (Pro and College)
Gridiron
Gridiron Year Books (Pro and College)
Who's Who in Pro Football
Who's Who in Pro Basketball

All of the foregoing six publications were subject to and part of the Distribution Agreement. (For convenience the said six publications shall hereinafter be referred to collectively as "the six publications.")

(b) Upon information and belief, under the terms of this contrived license agreement pertaining to the six publica-

tions, the defendant Sugar caused defendant Champion to be in default thereunder so that defendant Wrestling could claim the right to reacquire the said six publications.

(c) Upon information and belief, defendant Wrestling thereafter entered into an agreement to sell, transfer and assign the said six publications to a company independent of defendants known as National Sports Publishing Corporation (hereinafter referred to as "National"), whereby defendants Wrestling and Sugar would receive cash moneys from National with no payments being made to Champion.

(d) Upon information and belief, under the terms of the agreement between Wrestling and National, National did not assume any of the obligations with respect to moneys due and owing by Champion to plaintiff under the Distribution Agreement.

(e) Upon information and belief, defendants Sugar and Champion agreed to allow Champion's printer, Montreal Offset Press (hereinafter referred to as "Montreal") to acquire two other publications, the subject of and part of the Distribution Agreement, namely, Wrestling Monthly and Boxing Illustrated, in consideration for cancellation of all indebtedness of Champion to Montreal.

(f) The effect of the above plan and course of action was to leave the defendant Champion without any assets whatsoever to satisfy its liabilities.

11. Upon information and belief, sometime in November 1972, Montreal, through a subsidiary or affiliate, assumed ownership of the two publications, Wrestling Monthly and Boxing Illustrated, and has taken the position that neither Montreal nor the two publications transferred to Montreal is or are liable to plaintiff for unrecouped distribution advances or are subject to the Distribution Agreement.

12. Upon information and belief, in December 1972, National assumed ownership of the six publications ostensibly transferred to it by defendant Wrestling and National has taken the position that none of the said six publications are subject to the Distribution Agreement nor are the six publications nor National liable to the plaintiff for unrecouped distribution advances.

13. The actions of the defendants, Sugar, Champion and Wrestling, have damaged the plaintiff to the extent of plaintiff's unrecouped advances which at February 28, 1973 were in the sum of $28,588.08 plus a dollar amount not now known for operational subsidies to wholesalers, display allowances to retailers and returns of publications from wholesalers for which plaintiff will be required to reimburse such wholesalers and for which plaintiff is entitled to recoupment from Champion. In addition, plaintiff may be further damaged by the action of the said defendants by reason of Champion's failure to pay freight bills for delivery of such publications and which freight bills are Champion's liability but for which freight bills the freight forwarders are seeking payment from the plaintiff.

14. The actions of the said defendants have also deprived the plaintiff of expected profits under the Distribution Agreement, the amount of which profits the plaintiff requests leave to prove at trial.

AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS, CHAMPION SPORTS PUBLICATIONS, INC. and BERT RANDOLPH SUGAR

15. Repeats and realleges paragraphs 1 through 14 as if fully set forth herein.

16. If the defendant Wrestling was in fact the licensor of the publications published by Champion, then the defendants Champion and Sugar in failing to disclose such a material fact to the plaintiff committed a fraud upon the plaintiff by failing to disclose such fact and by misrepresenting that Champion was in fact the owner and publisher of said publications exclusively.

17. The plaintiff, but for the fraud and deceit alleged in paragraph 16 herein would not have entered into the Distribution Agreement or advance moneys to defendant Champion.

18. By reason of the fraudulent acts of the defendants Champion and Sugar, plaintiff has been damaged as set forth in paragraphs 13 and 14 above.

AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT, WRESTLING REVUE, INC.

19. Repeats and realleges paragraphs 1 through 14 as if fully set forth herein.

20. As stated aforesaid at paragraph 4, upon information and belief, defendant Sugar is the principal stockholder and principal officer of defendant Wrestling and by reason of such position of defendant Sugar, defendant Wrestling knew of the Distribution Agreement between plaintiff and defendant Champion, and defendant Wrestling caused or allowed Champion and Sugar to perpetrate the fraudulent acts upon the plaintiff, as alleged in the first and second causes of action.

21. By reason thereof, plaintiff has been damaged by defendant Wrestling as set forth in paragraphs 13 and 14 above.

AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT, CHAMPION SPORTS PUBLICATIONS, INC.

22. Repeats and realleges paragraphs 1 through 14 as if fully set forth herein.

23. Defendant Champion has breached its Distribution Agreement with plaintiff, to the damage of the plaintiff as set forth in paragraphs 13 and 14 above.
paragraphs 13 and 14 above.

AS AND FOR A FIFTH CAUSE OF ACTION AGAINST THE DEFENDANTS, WRESTLING REVUE, INC. AND BERT RANDOLPH SUGAR

24. Repeats and realleges paragraphs 1 through 14 and 23 as if fully set forth herein.

25. Defendants Wrestling and Sugar for the purpose of defrauding the plaintiff did cause defendant Champion to wrongfully breach its Distribution Agreement with plaintiff, to the damage of the plaintiff as set forth in paragraphs 1 3and 14 above.

AS AND FOR A SIXTH CAUSE OF ACTION AGAINST ALL DEFENDANTS

26. Repeats and realleges paragraphs 1 through 14 as if fully set forth herein.

27. Upon information and belief, defendant Champion in November 1972 and since that time has been unable to pay its debts as they mature and its liabilities far exceed its assets.

28. The actions of the defendants, as alleged in paragraph 10 above with respect to the six publications, was a transfer and assignment by Champion of its assets to de-

Verified Complaint.

fendant Wrestling without the payment of good and valuable present consideration in violation of the Debtor-Creditor Laws of the State of New York.

29. By reason of the foregoing, the plaintiff has been damaged as set forth in paragraphs 13 and 14 above.

WHEREFORE, plaintiff prays for judgment jointly and severally against the defendants, Champion Sports Publications, Inc., Wrestling Revue, Inc. and Bert Randolph Sugar, as follows:

(a) that plaintiff recover from the defendants jointly and severally the sum of $28,588.08 together with interest from February 28, 1973;

(b) that plaintiff recover from the defendants jointly and severally reimbursement for returns made by plaintiff to wholesalers from February 28, 1973 to date of trial, together with interest;

(c) that plaintiff recover from the defendants jointly and severally lost profits, as alleged in paragraph 14 above;

(d) the defendants be made to account to plaintiff for any benefits received under the assignment made to National and Montreal;

(e) the defendants be required to pay punitive damages to plaintiff;

(f) the defendants be required to pay the costs and disbursements of this action; and

(g) such other and further relief as may be just and proper in the premises.

YOUNG, SONNENFELD & BUSNER
Attorney for Plaintiff

(Verified by Stuart J. Friedman, March 29, 1973.)

Curtis Circulation Company

SINGLE COPY DISTRIBUTION AGREEMENT

Between CURTIS CIRCULATION COMPANY, 841 Chestnut Street, Philadelphia, Pa. 19107 (hereinafter called "Curtis"), and _____
CHAMPION SPORTS, INC.

having its principal place of business at 505 Park Avenue, New York, N. Y.
(hereinafter called "Publisher"), whereby Curtis will handle exclusively the United States and Canadian and foreign distribution of
Titles Mutually Agreed to (hereinafter called "Publication").

This Agreement shall become effective with issues dated 1971. Publisher warrants its ability and authority to deliver to Curtis, without liens or encumbrances, sufficient copies of Publication in salable condition to comply with the terms contained herein. The parties anticipate that Publication shall be issued _____.

Publication shall conform substantially to the specimen copy or outline of specifications submitted or shall have the following specifications:

As submitted

It is agreed that each copy of Publication will be clearly marked with a cover _____. The newsstand print order for initial distribution will be _____ as mutually agreed. All copies of Publication shall be fully returnable. Publisher hereby authorizes Curtis to adjust claims made by any of its wholesalers for delivery shortages and agrees to reimburse Curtis for any shortage allowances for Publication Curtis makes to its wholesalers.

Publisher shall be responsible for shipping and traffic costs of each issue, including import and other duties, to wholesalers, in the quantities as specified on the galley which, with publisher's cooperation, Curtis shall supply to Publisher sufficiently in advance so that shipments can be prepared and shipped to arrive at all wholesalers' warehouses approximately ten (10) days prior to established on-sale date. If Publisher requires, Curtis will supply prepared labels with Publisher's galley at an initial charge of Thirty-five dollars ($35.00) for plate preparation plus two cents (2c) per label for each label supplied. Any cost incurred for reshipping copies while Publication is on-sale will be borne by Publisher. Publisher will accept front covers, headings or wholesaler's certified statements as the basis for the adjustment of unsold copies and Curtis shall make no charge for servicing unsold copies covered by such acceptance. Should Publisher require whole copy returns, notice of the quantities desired and full return address must be supplied to Curtis at least fifteen (15) days prior to off-sale date. Curtis will use its best efforts to comply with Publisher's request for whole copy returns for which Publisher shall pay Curtis two cents (2c) per copy and prepay all freight and shipping charges. Publisher shall bear the risk of loss of whole copy returns while they are in Curtis' possession or in transit. Publisher shall keep all returned whole copies from entering the stream of commerce for at least 180 days after off-sale date.

Curtis shall calculate the individual town allotments and shall use its best efforts to assure the proper allotment of copies by wholesalers to those retail outlets which appear to Curtis to have the best potential for sale of Publication.

Curtis shall pay Publisher for Publication at the rate of 50% of cover price for each copy of Publication sold. For all copies distributed to: New York-Northeastern New Jersey Consolidated Metropolitan area; Stamford and Waterbury, Connecticut; Chicago and Addison, Illinois; Boston, Massachusetts; Philadelphia, Pennsylvania; and other high-cost wholesaler areas* Curtis will bill Publisher and Publisher agrees to pay Curtis 10 per copy as Publisher's share of the extra labor and handling costs incurred in these areas. Payment to Publisher for copies of Publication sold in Canada will be in Canadian funds or in United States funds of equivalent value. * and agreed to mutually.

Curtis will make payment for 70 % of estimated net sale to Publisher 52 days after on-sale date, with a second payment, if any, as shall be necessary to provide settlement for 90 % of the then estimated net sale 90 days after off-sale date. A third payment, if necessary, for 100% of the then estimated net sale will be made to Publisher 180 days after off-sale date. Final settlement will be made 360 days after off-sale date. If, for any reason, Curtis makes an over payment to Publisher on any one publication or issue it distributes for Publisher, such over payment may be deducted by Curtis from any subsequent payments due on any publication or issue which Curtis may distribute for Publisher. The return limit date for the wholesaler to make returns of Publication is 180 days after off-sale date; however, Publisher agrees to credit Curtis, at the same rate Curtis paid Publisher, for all unsold copies (whole copies, front covers, headings or returns evidenced by certified statement) for which Curtis gives credit to wholesalers, up to and beyond this time limit.

Publication will remain on-sale for a period of As Agreed days. Curtis shall provide Publisher with an estimate of final sale approximately 35 days after on-sale date. Curtis shall also provide Publisher an estimate of final sale, based upon returns received from wholesalers, approximately 90 days after off-sale date.

At no cost to Publisher, Curtis shall give space as it deems reasonable in its house organs and/or bulletins for the promotion of Publication. The cost of all special promotions authorized by Publisher shall be borne by Publisher.

Publisher agrees, at all times hereafter, to indemnify Curtis against all liability, loss, damage or expense of any kind which Curtis may incur by reason of any action, suit or proceedings that may be brought against Curtis or any of its wholesalers, employees or agents as a result of or based upon any material contained in Publication or in any promotional material relative thereto which Publisher furnishes Curtis and any trademark or copyright infringement resulting or allegedly resulting from Publication or said promotional material including, in all cases, the reasonable cost of attorneys' fees, expenses and disbursements.

This Agreement is not assignable or transferrable in whole or in part by either party without the written consent of the other. The term of t
agreement shall be for five years and, unless six months notice to terminate is given by one party to the other prior to the end of the initial five y
period, this contract shall be automatically extended for another five years, with the same termination and renewals to apply. It may be terminat
immediately by Curtis upon notice to Publisher should Publication, in the sole judgment of Curtis, be deemed to be libelous, obscene or indecent.

This Agreement sets forth the entire understanding of the parties, supersedes all previous agreements relating to the subject matter hereof, m
not be amended except in a writing signed by the parties and is binding upon the parties, their respective heirs, executors, administrators successors a
assigns. It has been signed in two counterparts, both of which shall be deemed to be originals.

+ Curtis will pay for each title ~~by the~~ 30th of the month followin
on sales date for 25% of the number of copies shipped for Curtis.
This amount of money will be deducted for the scheduled first
payment of 70% of estimated sale due 52 days after on sale date.
Curtis will pay carrier and charge to Publisher's account.

B R Sugar
Publisher

By _____

Title _____

CURTIS CIRCULATION COMPANY

By Robert B. Allegra

Title V.P. - Mktg.

ATTACHMENT:

CURTIS CIRCULATION COMPANY
SINGLE COPY DISTRIBUTION AGREEMENT

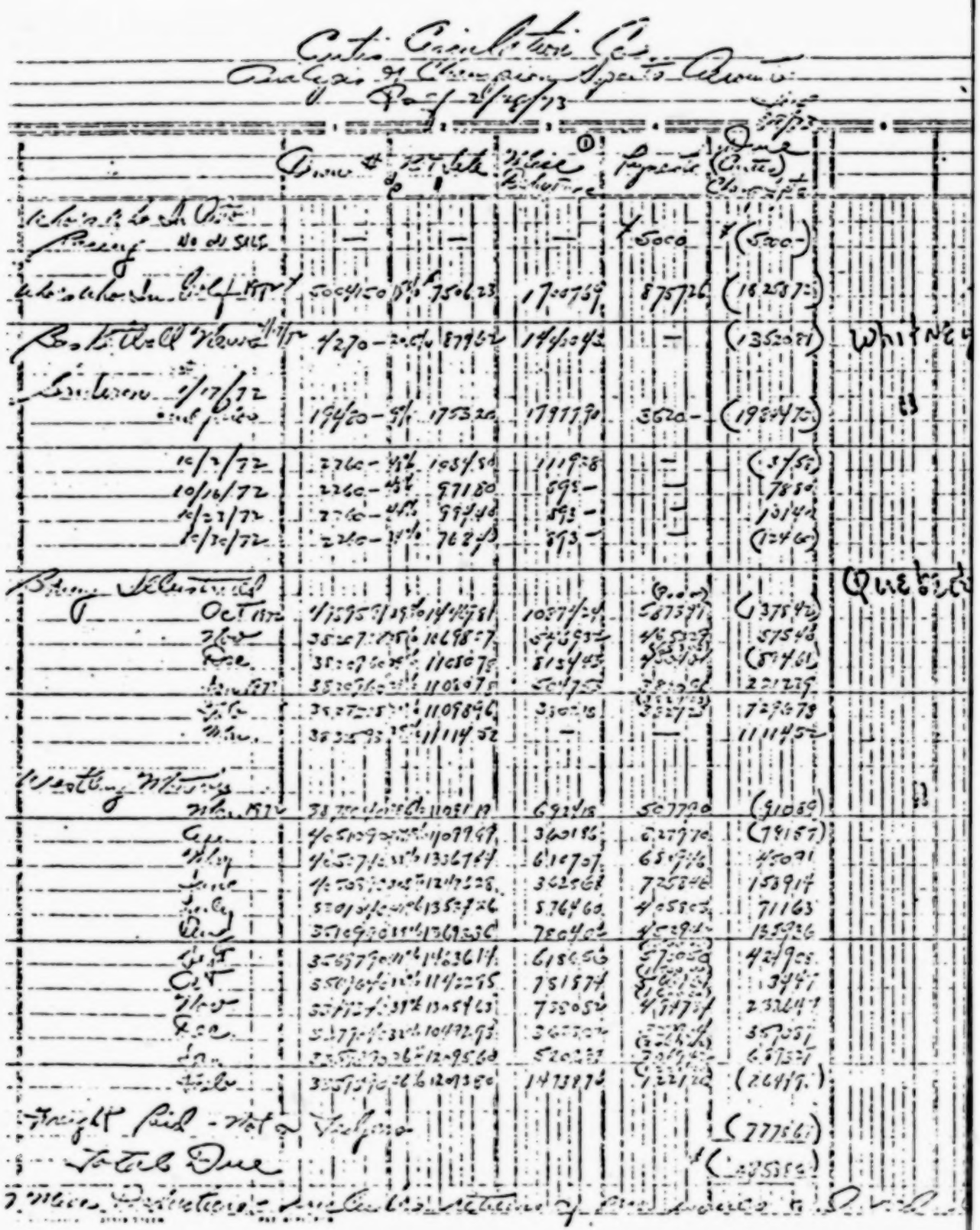
RE: CHAMPION SPORTS PUBLISHING CO.
505 PARK AVENUE
NEW YORK, N. Y.

PUBLICATIONS	CURTIS RATE
Boxing Ill. (April 1972)	50% off cover
Wrestling Monthly (Oct. 1971)	50% off cover
Gridiron Newspaper (Sept. 12, 1971)	50% & 60% off cover*
The Basketball News (Nov. 12, 1971)	50% & 60% off cover*
Who's Who in Golf (1971)	50% off cover
Who's Who in Auto Racing	
Gridiron Pro Annual	
Gridiron College Annual	
NFL Scouting Reports	

* Curtis discounts of 50% and 60% off cover will be determined on a selected basis where necessary to secure distribution.

CURTIS CIRCULATION COMPANY
By s/ G. M. McCOMB
Title President

s/ B. R. SUGAR
PUBLISHER



Notice of Motion to Dismiss.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of Fred I. Sonnenfeld, Esq., sworn to February 11, 1974, and upon the complaint filed herein, the undersigned will move before the Honorable Morris E. Lasker, a Judge of this Court, at Room 619, United States Courthouse, Foley Square, City, County and State of New York, on the 6th day of March, 1974, at 10 A. M. of that day or as soon thereafter as counsel can be heard, for an order seeking the following relief:

1. To dismiss the action on the ground that the plaintiffs do not have standing to bring the within action in that they have not been deprived of any property right by State action, in violation of the Fourteenth Amendment to the United States Constitution;

2. To dismiss the action on the ground that the plaintiffs have commenced a prior action in the New York Supreme Court, Westchester County, which is presently pending and that the relief sought in this action by the plaintiffs is identical to the relief sought in said prior pending action.

3. To dismiss the action on the ground that plaintiffs have waived any right which they may have had to challenge the constitutionality of the New York State attachment statute, Article 62 of the Civil Practice Law and Rules, by their election in the State Courts to have the re-

spective interests of the parties making claim to the property in question resolved in a plenary trial in a consolidated action involving all of such parties;

4. To dismiss the complaint on the ground that the constitutional issue raised in this action can be raised by the plaintiffs in a consolidated action now pending in the Courts of the State of New York and the Federal Courts, upon the circumstances of this case, should decline to take jurisdiction over the constitutional issue allegedly presented; or, in the alternative,

5. For a stay of further proceedings in this action pending the rendition of the decision by the United States Supreme Court in an action now pending before it, *Mitchell* v. *W. T. Grant Co.*, which decision may be dispositive of the constitutional issue raised in this action; and

6. For such other and further relief as may be just and proper, including the granting of costs.

PLEASE TAKE FURTHER NOTICE that answering affidavits and memoranda of law, if any, are required to be submitted to the undersigned at least five (5) days prior to the return date hereof.

Dated: New York, New York, February 11, 1974.

Yours, etc.,

YOUNG, SONNENFELD & BUSNER
Attorneys for Defendant

To:

LEVY AND LEDES, Esqs.
Attorneys for Plaintiffs

GILBERT, SEGALL & YOUNG, Esqs.
Attorneys for Defendant

JOHN J. MCCLOSKEY, Sheriff of the City of New York, Defendant

HON. MALCOLM WILSON, Governor of the State of New York, Defendant

HON. LOUIS J. LEFKOWITZ, Attorney General of the State of New York
Attorney for Justices Fine and Beisheim and himself

CONTINENTAL CASUALTY COMPANY
Defendant

Affidavit of Fred I. Sonnenfeld, in Support of Motion to Dismiss.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

FRED I. SONNENFELD, being duly sworn, deposes and says:

1. Your deponent is an attorney at law duly licensed to practice in all the Courts of the State of New York, including this Court; is a member of the firm of Young, Sonnenfeld & Busner, attorneys for defendant Curtis Circulation Company, and is fully familiar with the facts and circumstances hereinafter alleged.

2. The within action seeks to enjoin the enforcement of the New York attachment statute, Article 62 of the Civil Practice Law and Rules. Plaintiffs claim that the receipt of certain monies by the Sheriff of the City of New York pursuant to an order of attachment issued under such statute deprived them of property without due process of law, in violation of the Fifth and Fourteenth Amendments to the United States Constitution and that said attachment statute, insofar as it permits the issuance of an order of attachment on ex parte application, is unconstitutional by virtue of said amendments to the United States Constitution.

3. Deponent makes this affidavit in support of a motion to dismiss the within action under Rule 12, Federal Rules of Civil Procedure, upon the following grounds:

Affidavit of Fred I. Sonnenfeld, in Support of Motion to Dismiss.

(a) The plaintiffs lack standing to bring the within action as they have been deprived of no property right under the Fifth and Fourteenth Amendments to the United States Constitution by reason of the fact that the plaintiffs have no possessory rights in the monies deposited by the defendant National with the Sheriff, as National had previously retained such monies and had resolved to continue such retention until the underlying claims of the parties were resolved to its satisfaction.

(b) There is a prior action pending in which the plaintiffs are seeking the same relief as they seek in this action, said prior action being an action instituted by the plaintiffs in Supreme Court, Westchester County, under the title of Wrestling Revue, Inc. v. National Sports Publishing Corporation, said relief being the recovery of money damages for breach of contract and artificially denominated by the plaintiffs in this action as the constitutional deprivation of property without due process.

(c) The plaintiffs have waived any right to raise the constitutional issue sought to be raised in this action by virtue of its election in the State Courts to have its rights as well as the rights of Curtis and National determined in a plenary trial in a consolidated action to which the plaintiffs, Curtis and National are all parties, which consolidated action is presently pending in the State Court.

(d) The constitutional issue raised by the plaintiffs in this action can be determined in the pending State consolidated action and upon the circumstances of this case, the Federal Courts should decline to take jurisdiction on general grounds of comity, federalism and equity.

4. In the event the Court should not grant relief pursuant to Rule 12 on any of the foregoing grounds, this

affidavit is made in support of an application for alternative relief, to wit, that further proceedings in this action be stayed pending the rendition of a decision by the United States Supreme Court in the case of *Mitchell* v. *W. T. Grant,* which decision may be dispositive of the constitutional issues raised herein.

I. Facts Preceding the Issuance of the Order of Attachment

5. Some time prior to August 1971, Curtis entered into negotiations with Bert Randolph Sugar to arrange for distribution of certain periodicals which Sugar represented to Curtis were being published by him. As a result of such negotiations, in August 1971, Curtis entered into a written distribution agreement (a copy of which is annexed to the Curtis answer herein in Appendix A thereto) wherein Sugar designated himself and "Champion Sports, Inc." as "Publisher". Since the execution of said written distribution agreement, Sugar and his attorneys have represented that "Champion Sports, Inc." is in reality a corporate entity known as "Champion Sports Publishing, Inc." (hereinafter "Champion").

6. Under the terms of said written distribution agreement, Curtis undertook to distribute for Champion certain periodicals published by Champion which were thereafter designated in writing which writing is appended to such distribution agreement.

7. Further, under the terms of said distribution agreement, advances were made by Curtis to Champion which advances Curtis was entitled to recoup from subsequent payments which might become due to Champion on any

other issues or publications which Curtis was distributing for Champion. Thus, the agreement provided:

> "If, for any reason, Curtis makes an overpayment to Publisher on any one publication or issue it distributes for Publisher, such overpayment may be deducted by Curtis from any subsequent payment due on any publication or issue which Curtis may distribute for Publisher."

The distribution agreement was for a term of five years.

8. After the execution of said written distribution agreement, Curtis acted as distributor for Champion under the terms of such agreement and made advances to Champion and, in the latter part of 1972, by virtue of such advances, Champion was substantially indebted to Curtis.

9. Also, an air freight company which had shipped the magazines published by Champion and being distributed by Curtis, had instituted suit against Champion, Sugar, Curtis (and the printer of such periodicals) for allegedly unpaid freight forwarding charges, which charges under the terms of the distribution agreement were acknowledged by Champion and Sugar to be the liability of Champion and not of Curtis. Despite the terms of the distribution agreement and such acknowledgment, Curtis was naturally concerned by the institution of such lawsuit and Champion's failure to pay such charges.

10. While Curtis and its attorneys were engaged in attempting to resolve these matters, certain startling facts came to the attention of the Curtis attorneys from sources other than Champion or its attorneys, which facts indicated that a fraud had been or was being perpetrated upon Curtis by Champion and Sugar and a corporation

known as Wrestling Revue, Inc. (hereinafter "Wrestling"), one of the plaintiffs in this action.

11. The substance of the facts which came to the attention of Curtis and its attorneys was the following:

(a) That Wrestling (of which it was later revealed Sugar purportedly owned 75% of the capital stock and a family trust of which the wife of one of his attorneys is trustee and their children beneficiaries, purportedly owned the other 25%) had represented to third parties that Wrestling, not Champion, was the owner of the publications which Champion had engaged Curtis to distribute under the terms of said distribution agreement.

(b) That based upon such representations, Wrestling had entered into two separate agreements with such third parties during the latter part of 1972 for the sale of such publications to such third parties with the consideration for such sale payable to Wrestling, not to Champion.

(c) That Wrestling had based such representations of ownership upon further representations that: Champion (of which it was later revealed Sugar purportedly owned 80% of the capital stock) had never owned such publications but was publishing the same under a mere license given by Wrestling to Champion; that such license had issued some time prior to the entry by Champion into its distribution agreement with Curtis; and that such license had been forfeited by Champion in or about November 1972 by virtue of its failure to pay license fees to Wrestling.

(d) One of the third parties to whom some of such publications were purportedly sold by Wrestling is National Sports Publishing Corporation (hereinafter "National"), one of the defendants in this pending action.

(e) The discovery of such facts, from sources other than Sugar or Champion, who had not revealed such facts to Curtis, indicated that Sugar and Champion had engaged in a fraudulent scheme to deprive Curtis of the ability to collect the monies due to it from Champion either (i) by concocting the licensing arrangement with Wrestling prior to the August 1971 distribution agreement and failing to disclose to Curtis that Champion was not in fact the owner of the publication which it had contracted to have Curtis distribute, or (ii) by concocting the purported license agreement after the fact, that is, after the execution of the August 1971 agreement and perhaps some time in late 1972 in order to effectuate the purported sale by Wrestling of the publications to which Champion in fact had valid title.

12. As Sugar, through Wrestling, had purported to sell the publications to third parties under arrangements where the consideration for such sales flowed to Wrestling and not to Champion, Curtis, in order to protect its rights in the proceeds of such sales, had to find a way to stop the flow of such assets into the hands of persons or entities who could dissipate such assets. Curtis had no way of determining who among Sugar, Wrestling and Champion were receiving or had received any of the assets to which Champion alone, as trustee for its creditors, was entitled; under the terms of the contracts of sale, one or more payments had already become due and unless Curtis acted promptly, other payments would become due.

13. Accordingly, Curtis commenced the action in the State Court which is the subject of the complaint in this Court, wherein the order of attachment was issued on April 13, 1973.

Affidavit of Fred I. Sonnenfeld, in Support of Motion to Dismiss.

14. The complaint in the action and the affidavit in support of the application for the order of attachment (Appendix A to Curtis answer herein) set forth in substance the facts hereinabove alleged. As provided in Article 62 of the New York Civil Practice Law and Rules, the application was made ex parte based on Section 6201, subdivisions 4, 5 and 8, all of which are based upon fraudulent acts of defendants. It is respectfully submitted that to have given notice of such application for such order of attachment on the basis of the facts which had come to the attention of Curtis, and which had been secreted from Curtis by Sugar, Champion and their attorneys, would have been foolhardy, in that such facts indicated a clear danger that notice itself might precipitate further flow and dissipation of assets of Champion beyond the reach of its creditors.

15. This affidavit would become unduly lengthy if the facts uncovered by Curtis and its attorneys in depositions taken in the Curtis State action and by virtue of investigations during that action were set forth herein. Moreover, such facts form the basis of Curtis' proof and its contentions in the pending State action and it is not Curtis' purpose to litigate those issues before this Court, especially not on this motion. Suffice it to say that the further facts uncovered by Curtis and its attorneys following the institution of the Curtis State action, in the considered opinion of your deponent, demonstrate the truth of the allegations set forth in the Curtis affidavit in support of its application for an order of attachment.

II. *Facts Concerning Proceedings in State Courts*

16. Much of the salient facts are admitted on the face of the complaint in this action.

Affidavit of Fred I. Sonnenfeld, in Support of Motion to Dismiss.

(a) It is alleged (¶ 20) that the purported agreement between Wrestling and National for the sale of some of the publications which Champion had engaged Curtis to distribute was made on November 28, 1972.

(b) The first installment required by the purported agreement in the amount of $25,000 was paid at that time (¶ 20) and such payment is not placed in issue in this action.

(c) A second payment in the amount of $12,500 purportedly became due on February 28, 1973 (¶ 20) and National failed and refused to make such payment when it became due (¶ 21).

(d) The reason National refused to make such payment when it became due was stated in a letter it addressed to Wrestling and Sugar on February 28, 1973, a copy of which is annexed hereto as Exhibit A. As shown by said letter, National deducted and set off the $12,500 payment on account of the claims of Curtis against Champion and derivatively against National based on the asserted liability of the latter under the terms of the distribution agreement, so that on February 28, 1973, a month and a half *prior* to the commencement of the Curtis State action and the issuance of the order of attachment, National, unknown to Curtis, had resolved to retain the monies with respect to which plaintiffs claim they were deprived of property rights by virtue of the subsequent order of attachment.

(e) It is respectfully submitted that upon National's taking such position, the plaintiffs had no more property rights in the monies than did Curtis; neither of them had any rights to possession of the monies; and the monies could not be acquired by either of them until the tripartite dispute was resolved among the parties, either through private negotiations or through the Courts.

(f) The only rights which the plaintiff had upon National's refusal to make payment was the right to sue National for breach of contract; it is this crucial point that tends to be obscured by plaintiffs' action herein claiming a deprivation of property rights without due process.

17. Indeed, the plaintiffs quite promptly elected to exercise that right by instituting an action against National within a week after National's refusal to pay. On March 5, 1973, Wrestling sued National in the Supreme Court of the State of New York, Westchester County, Index No. 6275/73 (Complaint ¶ 21) alleging a breach of contract arising out of failure to make the refused payment and demanding the $12,500 payment and the entire purchase price thereafter to become due under the purported agreement. The said action is still pending (¶ 21).

18. It was only after National's *private* determination not to pay the monies over to plaintiffs and after the plaintiffs commenced the action against National, and on April 13, 1973, that Curtis commenced its State action against the plaintiffs and Champion, wherein the order of attachment issued and was served on National on April 16, 1973. The effect of such service on National, insofar as any alleged property rights of plaintiffs were concerned, was mere surplusage, as National had refused to make any payments to plaintiff in any event unless and until the plaintiffs reduced their claim to judgment in the pending Westchester action.

19. Since National had, prior to the attachment, withheld payment to secure itself against claims asserted by Curtis, it decided to pay over to the Sheriff so much of the monies as it was withholding, in any event, as were applicable to the Curtis claim (having made other deductions from the original amount withheld to cover claims other

than those of Curtis). Thus National elected to substitute the Sheriff as the depository of the monies it was withholding for the Curtis claim instead of holding such monies itself. The result of this decision affected no one's rights to the proceeds, as those rights became fixed when National resolved to retain the monies until the claims of the parties were resolved. That National's intention was simply to substitute the Sheriff as depository pending such determination of rights is demonstrated (a) by the garnishee statement rendered to the Sheriff (Exhibit B annexed hereto) and (b) National's answer in this action, including its prayer that if the attachment should be dissolved, the monies be returned to National.

20. The effect of National substituting the Sheriff as depository of the funds it had previously resolved to withhold in any event upon the plaintiffs was absolutely nil. Their only right, the right to sue National for breach of contract, remained entirely intact and wholly unaffected; plaintiffs were no more deprived of any property rights by virtue of such transfer to the Sheriff than they were by National's previous retention of the funds in its own hands.

21. What the plaintiffs seek to achieve in this action is to convert their right to sue for breach of contract, of which they have not been deprived—witness their pending action in the State Courts, into a constitutional claim of deprivation of property without due process. But the most careful scrutiny of the facts fails to reveal the *res* of which the plaintiffs have been deprived. Far from being prejudiced by the attachment, if the plaintiffs succeed in having this Court dissolve the attachment and paying over the monies to plaintiffs, they will have realized what they never could have realized without the attachment, viz., possession of

monies to which they had no right of possession in the first instance, by virtue of National's retention of such monies prior to the attachment. Moreover, if the monies are turned over to the plaintiffs, they will have obtained, to the extent of such funds, the very relief they seek in their State Court action for breach of contract, without ever proving *their* entitlement to such funds in the pending State action or in this action.

22. If the foregoing circumstances could have left any room for doubt that plaintiffs had no rights in the proceeds retained, first by National, then by the Sheriff, except the right to litigate their claims as they elected to do, such doubt was clearly eliminated by the plaintiffs themselves. On May 8, 1973, a motion was made by plaintiffs in the Westchester court to consolidate the Curtis State action into the plaintiffs' State action in Westchester County, which motion was granted on September 25, 1973 and the consolidated action is still pending. Plaintiffs' affidavit in support of such motion explicitly pointed out to the Court that:

> ". . . the primary issue of law and fact presented to the Court in the action brought by Wrestling against National relates to its right of offset for the claim asserted by Curtis . . . ."

23. Prior to the consolidation of the State actions, plaintiffs might have argued that the deposit of the monies with the Sheriff did in fact deprive them of property without due process on the theory that if they succeeded in their action against National for breach of contract, National would have an offset to the extent of the proceeds paid over to the Sheriff. If such argument ever had any validity, it was made moot and academic by the election of the plain-

tiffs to consolidate the two actions so that the rights of Curtis against the plaintiffs and Champion and the rights of the plaintiffs against National would be determined simultaneously. Such simultaneous determination of the respective rights of the parties now assures the plaintiffs that any monies with respect to which they prove their entitlement in their breach of contract action will not be withheld from them by virtue of the attacment and the deposit of the subject proceeds by National with the Sheriff.

24. Consequently, the plaintiffs' motion to consolidate the two actions clearly represented an election of remedies to preserve their rights for claimed breach of contract by such consolidation rather than by a constitutional or more pedestrian attack upon the order of attachment itself. Indeed, the consolidation of said actions does in fact serve as an eminently just and fair solution to any problems which plaintiffs might otherwise have had by virtue of the attachment and the deposit of monies with the Sheriff. In short, the consolidation assures the plaintiffs that if they prevail on their claim of breach of contract against National, they will have suffered no loss or harm by virtue of the attachment. This is no more or less than the entitlement which the plaintiffs had prior to the attachment and the deposit of monies with the Sheriff.

25. Assuming arguendo that the plaintiffs have not waived their right to contest the attachment, it is respectfully submitted that the prior proceedings in the two State Court actions referred to and the present pending consolidated action, require that the plaintiffs should be challenging the order of attachment in the actions pending in the State Courts. It is also to be noted that the Curtis State action was pending some ten months before this

Affidavit of Fred I. Sonnenfeld, in Support of Motion to Dismiss.

Federal action was commenced. During all of that time the plaintiffs never sought relief in the State Court to vacate the attachment either on constitutional grounds or on any other grounds. During that time, the plaintiffs have not only moved to consolidate the two State actions but have also participated in pretrial depositions, instituted both by themselves and by Curtis.

26. Accordingly, on this record, the Federal Courts should decline jurisdiction over a matter for which relief can be obtained in the State Courts on general grounds of federalism, comity and equity. The issues among all of the interested parties have been drawn in the State Court actions; pretrial discovery has been pursued in the State Court actions and the relief which the plaintiffs seek in this action is available in the State Court actions. It is respectfully submitted that this is clearly a case where the Federal Court should decline to interfere with the State Court proceedings by taking jurisdiction itself.

27. On the basis of the foregoing, it is respectfully requested that the complaint be dismissed.

28. It is also respectfully requested that if the Court should not dismiss the complaint on any of the grounds set forth herein, that it alternatively stay further proceedings in this action pending the rendition of a decision by the United States Supreme Court in an action known as *Mitchell* v. *W. T. Grant Co.*, No. 72-6160, now *sub judice*. The case is commented upon in 42 LW 3345, 1086. It was argued in early December 1973 and the Court's decision in that case might clearly be dispositive of the constitutional issues presented here, whereas *Fuentes* v. *Shevin*, 407 U.S. 67 relied upon by plaintiffs is not.

Affidavit of Fred I. Sonnenfeld, in Support of Motion to Dismiss.

First, *Fuentes* (involving the constitutionality of two State replevin statutes) was not decided by the full bench but by a 4-3 split decision in which neither Justices Powell nor Rehnquist partook. *Mitchell* (involving the constitutionality of the Louisiana sequestration statute) was argued before the full bench and its decision may very well depart from the *Fuentes* approach. 42 LW 1086.

Second, upon the argument of *Mitchell*, several justices are reported to have indicated that they were considering overruling the decision of the Court in *Fuentes*. 42 LW 1086.

Third, two distinctions between the replevin statutes under consideration in *Fuentes* and Article 62 of the New York Civil Practice Law and Rules may be passed upon in *Mitchell:*

(a) *Fuentes* did not decide whether ex parte seizure orders would be constitutional upon a showing that they were required to preserve the assets; that question is raised in *Mitchell*, 42 LW 1086.

(b) *Fuentes* did not decide whether ex parte signed orders which were subject to judicial review (as opposed to their ministerial issuance by a non-judicial official) would be constitutional; that question is also raised in *Mitchell*, 42 LW 1086.

29. By reason of the foregoing, it is respectfully requested that the complaint be dismissed or, alternatively, that this action be stayed pending decision of the Mitchell case.

(Sworn to by Fred I. Sonnenfeld, February 11, 1974.)

Exhibit A, Letter, February 28, 1973.

NATIONAL STORES PUBLISHING CORPORATION
Room 1400
150 East 58th Street
New York, N. Y. 10022

February 28, 1973

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Wrestling Revne, Inc. and
Mr. Bert Randolph Sugar
c/o John G. Ledes, Esq.
Maple Avenue
Katonah, New York 10536

Gentlemen:

We refer to the agreement dated November 28, 1972 whereby we purchased from Wrestling Revue, Inc. certain interests in THE BASKETBALL NEWS, GRIDIRON, GRIDIRON PRO YEARBOOK, GRIDIRON COLLEGE YEARBOOK and other publications, and to the Guaranty and Agreement of Mr. Bert Randolph Sugar of the same date in connection with such agreement and purchase.

Please be advised that Curtis Circulation Company, The Chestnut East Building, 811 Chestnut Street, Philadelphia, Pennsylvania 19105, has asserted the claim that we are subject to the terms of the distribution agreement made in 1971 with respect to the above named magazines, and that the sum of $19,974.90 is presently due Curtis Circulation Company by GRIDIRON and the sum of $13,377.23 by BASKETBALL NEWS.

Curtis Circulation Company has further called our attention to a contingent liability in the amount of $42,095.87

resulting from a claim and cross-claim in the action entitled *Emery Air Freight Corporation* v. *Sugar, et al.*

Pursuant to the provisions of Paragraph 8 of the aforementioned purchase agreement and the Guaranty and Agreement, we hereby demand that each of you indemnify and hold us harmless against such claims by Curtis Circulation Company and related expenses.

Without limiting our right to such indemnities or our further rights in the premises, we hereby deduct and set off the amount of such claims, to the extent of $12,500, from the installment of the purchase price due under Paragraph 2(b) of the purchase agreement. Therefore, no amount is presently due and payable to Wrestling Revue, Inc. and no payment is enclosed.

Very truly yours,

NATIONAL SPORTS PUBLISHING
CORPORATION
By HARRY P. DEDYO

cc: Levy and Ledes, Esqs.

Exhibit B, Garnishee Statement.

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

CURTIS CIRCULATION COMPANY,

Plaintiff,

against

CHAMPION SPORTS PUBLICATIONS, INC., WRESTLING REVUE, INC. and BERT RANDOLPH SUGAR,

Defendants.

Index No. 6102/73

TO THE SHERIFF OF THE CITY OF NEW YORK:

In compliance with Section 6219 of the Civil Practice Law and Rules, and with reference to the order of attachment against the property of Champion Sports Publications, Inc., Wrestling Revue, Inc. ("Wrestling") and Bert Randolph Sugar ("Sugar"), defendants in the above entitled action, served on National Sports Publishing Corporation ("National") on the 16th day of April, 1973, I, HARRY P. DEDYO, Vice President of National, do hereby state that:

1. National as Buyer and Wrestling as Seller entered into an agreement dated November 28, 1972 as of October 31, 1972 (the "Purchase Agreement"), whereby National purchased certain assets including the names, trademarks and goodwill of certain magazines. The Purchase Agreement provides for the payment by National to Wrestling of $12,500 on account of the purchase price on February 28, 1973, subject however to the terms and conditions of

Exhibit B, Garnishee Statement.

the Purchase Agreement, including without limitation National's right to set off and deduct the amount of certain claims and expenses. Pursuant to the Purchase Agreement, National set off and deducted, prior to the date of service of the order of attachment herein, a total of $3,176.46, leaving $9,323.54 as the balance of such February 28, 1973 installment. Prior to the date of service of the order of attachment herein, National set off and deducted such balance against claims of Curtis Circulation Company, the plaintiff herein, which I am informed and believe are among the claims which are the subject matter of this action. Accordingly, National is making payment to the Sheriff of the City of New York in the amount of $9,323.54, in discharge, to the extent of such payment, of its obligation of Wrestling with respect to the February 28, 1973 purchase price installment and of the claims of Curtis Circulation Company described above.

2. The Purchase Agreement provides for an additional payment by National to Wrestling of $12,500 on account of the purchase price on May 28, 1973, again subject to the terms and conditions of said Agreement.

3. The Purchase Agreement further provides for contingent payments, as part of the purchase price, up to a maximum of $50,000. Such payments will be due only if there are certain after-tax profits of National from the magazines acquired by it from Wrestling and are again subject to the terms and conditions of the Purchase Agreement. The first of such additional payments will not be due in any event until March 31, 1974.

4. Pursuant to an employment agreement dated November 28, 1972 between National and Sugar, National agreed to pay Sugar a salary at the rate of $12,500 per year, in equal monthly installments, subject to the terms and condi-

Exhibit B, Garnishee Statement.

tions of such agreement. Such salary has been paid to May 15, 1973. Said employment agreement further provides for certain contingent payments based on advertising sales, none of which payments are due; for certain contingent payments based on the after-tax profits, if any, of two of the magazines included in the sale from Wrestling, the first of which payments will not be due in any event until March 31, 1974; and for certain editorial fees, none of which are now due.

5. Pursuant to a separate agreement dated November 28, 1972, National subleased certain premises from Wrestling on the terms and conditions set forth therein, at a rental currently amounting to $200.00 per month. Such rent has been paid to April 28, 1973. Said agreement further provides for payment by National of certain typesetting charges, none of which are now due.

6. Pursuant to the Purchase Agreement and a separate escrow agreement between the parties dated November 28, 1972, a balance of $271.01 is being held in escrow by National's attorneys, Gilbert, Segall and Young, with respect to certain expenses claimed to have been incurred by Wrestling. No part of such balance will be due to Wrestling unless and until verification has been completed, and if such expenses cannot be properly verified, such balance will belong to National.

NATIONAL SPORTS PUBLISHING CORPORATION

By HARRY P. DEDYO

Vice President

April 26, 1973.

Supplemental Affirmation in Support of Motion for Dismissal Pursuant to Rule 12(b).

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK }

PHILIP H. BUSNER, an attorney at law duly admitted to practice before the Courts of the State of New York, and before this Court, and a member of the firm of Young, Sonnenfeld & Busner, attorneys of record for the defendant Curtis Circulation Company herein, hereby alleges under penalties of perjury:

1. This affirmation is made to supplement the affidavit of Fred I. Sonnenfeld, sworn to February 11, 1974, in support of a motion by the defendant Curtis heretofore served and filed with this Court, which motion is returnable March 6, 1974.

2. The motion herein is for dismissal of the complaint pursuant to Rule 12(b) on grounds including (a) the pendency of a prior action in the New York Supreme Court, Westchester County, which is presently pending and in which the plaintiffs seek the identical relief which is sought in this action and (b) the constitutional issue raised in this action can be raised by the plaintiffs in a consolidated action now pending in the Courts of the State of New York and upon the prior proceedings in said State actions and the circumstances of this case, this Court should decline jurisdiction over the within action.

Supplemental Affirmation in Support of Motion for Dismissal Pursuant to Rule 12(b).

3. On the same day that the Curtis motion papers on this application were served, February 12, 1974, the plaintiffs in this action served a notice of cross-motion upon the defendants Curtis and National in the presently pending consolidated actions in the New York Supreme Court, Westchester County to which reference was made in the original Curtis motion papers. Annexed hereto as Exhibit 1 is a copy of said notice of cross-motion and the affirmation submitted in support thereof. It is respectfully submitted that such papers have a direct bearing upon the issues presented by the within motion and, particularly, are demonstrative of the Curtis position on this motion, to wit, that upon the circumstances of this case, this Court should decline to take jurisdiction, on grounds that a previous action is pending and on grounds of comity, federalism and equity.

4. As shown by Exhibit 1, the plaintiffs in this action have requested a stay of further proceedings by Curtis in the pending State consolidated action on the ground that the attachment issued therein effected a deprivation of their property without due process of law.

5. Hence, the plaintiffs in this action having scrupulously avoided presenting the constitutional issue in the State Courts during some ten months of litigation and having now brought that issue before this Court, now seek relief in the State Court actions on the very same issue. Clearly, this latest action of said plaintiffs is demonstrative of the endless exacerbation of issues and multiplicity of litigations, and possibility of the rendition of conflicting decisions by the State Court and this Court which will ensue if this Court accepts jurisdiction of the action presented in the complaint.

Supplemental Affirmation in Support of Motion for Dismissal Pursuant to Rule 12(b).

6. Annexed hereto as Exhibit 2 is a copy of the affirmation submitted on behalf of Curtis in said State Court action, wherein the quandary of Curtis is set forth with respect to how to respond to plaintiffs' tactics of dividing the controversy among the parties into bits and pieces presenting such parts as the plaintiffs from time to time elect in one forum or another.

7. On the basis of the original motion papers filed by Curtis herein and this affirmation and the exhibits annexed hereto, it is respectfully requested that the relief sought by Curtis herein be granted.

Dated: New York, New York
February 19, 1974

PHILIP H. BUSNER
Philip H. Busner

Notice of Appearance (Attorney General).

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE, that the defendants Malcolm Wilson, Louis J. Lefkowitz, Attorney General, Justices Sidney A. Fine and George Beisheim hereby appear in the above entitled action, and that the undersigned has been retained as attorney for said defendants and demands that all papers in this action be served upon the undersigned at the office and post office address stated below.

Dated: New York, New York
January 31, 1974

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Pro Se and Attorney for
Defendants Fine & Beisheim

To: LEVY & LEEDS
Attorneys for Plaintiffs

Notice of Motion to Dismiss Complaint (Attorney General).

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavit of A. Seth Greenwald, sworn to July 2, 1974, the memorandum of law (to be filed by July 8, 1974 pursuant to order of the Court), the undersigned will move this statutory Court, on July 10, 1974, at 4:00 o'clock in the afternoon, Courtroom 2703, United States Court House, Foley Square, New York, New York, for an order pursuant to the Federal Rules of Civil Procedure, Rules 12(b)(1) and (6), dismissing the complaint and amended complaint for lack of jurisdiction over the subject matter and failure to state a claim upon which relief may be granted and for such other and further relief as may be just and proper.

Dated: New York, New York
July 2, 1974

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Pro Se and Attorney for
defendants Wilson, Fine
and Beisheim

By: A. SETH GREENWALD
A. SETH GREENWALD
Assistant Attorney General

To: LEVY & LEDES, Esqs.
YOUNG, SONNENFELD & BUSNER, Esqs.
GILBERT, SEGALL & YOUNG, Esqs.

Affidavit of A. Seth Greenwald.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

A. SETH GREENWALD, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, *pro se* and attorney for defendants Wilson, Fine and Beisheim. For the reasons stated in the memorandum of law to be filed by July 8, 1974 (see order of June 20, 1974, LASKER, D.J.). I, respectfully request that the defendants' motion to dismiss be granted. While the three-judge court has been convened, I subject that the complaint is insufficient as a matter of law. *Mitchell* v. *W. T. Grant Co.*, —— U.S. ——, 40 L. Ed. 2d 406 (1974).

I would also like to point out that Malcolm Wilson, Governor of the State of New York, is not properly a defendant in this action since he has no special responsibility for the enforcement of the statute herein involved, over and above his general duties as Chief Executive of the State. New York Constitution, Article IV, § 1. *Fitts* v. *McGhee*, 172 U.S. 516, 19 S. Ct. 269 (1899); *Oliver* v. *Board of Education*, 306 F. Supp. 1286 (S.D.N.Y. 1969); *Camacho* v. *Rogers*, 199 F. Supp. 155 (S.D.N.Y. 1961); *Coon* v. *Tingle*, 277 F. Supp. 304 (N.D. Ga. 1967). Likewise Louis J. Lefkowitz, the Attorney General of the State of New York, had no statutory duties as to attach-

Affidavit of A. Seth Greenwald.

ments, CPLR Art. 62. Of course the Attorney General can and must defend the state statute's constitutionality, N.Y. Executive Law § 71, regardless of his status as a named defendant.

Apparently, plaintiffs seek damages. Defendants Fine and Beisheim, as Justices of the Supreme Court of the State of New York, are immune for liability for damage for their judicial acts. *Pierson* v. *Ray*, 386 U.S. 547, 553-555 (1967).

WHEREFORE, your deponent respectfully requests that the complaint be dismissed.

(Sworn to by A. Seth Greenwald, July 2, 1974.)

Supplemental Complaint.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiffs, by their attorneys Gabriel I. Levy and John G. Ledes, for their supplemental complaint against the defendants other than National Sports Publishing Corporation, respectfully alleges to the Court and shows that since the time when plaintiff's complaint was filed, the following additional facts have occurred which further deprived plaintiff, Wrestling Revue, Inc. of its property, without notice and hearing in violations of the procedural due process rights guaranteed to Wrestling Revue, Inc. by the Fourteenth Amendment to the Constitution of the United States.

1. On the 8th day of March, 1974 Wrestling Revue, Inc. ("Wrestling Revue") and National Sports Publishing Corporation ("National Sports") entered into an agreement settling all disputes between them, which inter alia provided for the payment of $15,676.46 by National Sports to Wrestling Revue in stated installments on April 30, 1974, May 31, 1974 and June 30, 1974 and further provided that if on the due date of any payment provided for therein, such payment is subject to the levy under the Attachment Order or any renewal or extension thereof, National Sports shall make such payment to the Sheriff of the City of New York, instead of Wrestling Revue.

2. On April 16, 1974, Curtis Circulation Company secured an order from the Supreme Court of the State of New York, County of Westchester, pursuant to Article 62

of the Civil Practice Law and Rules of the State of New York, extending the levy under the Order of Attachment for an additional year, until March 24, 1975 with respect to "[a]ll property in the possession or control of National Sports Publishing Corporation in which any or all of the defendants Champion Sports Publications, Inc., Wrestling Revue, Inc. and Bert Randolph Sugar, have any title or interest, thereby under color of state law further violating the procedural due process rights guaranteed to Sugar, Wrestling Revue and Champion Sports by the Fourteenth Amendment to the Constitution of the United States, by providing for the continued taking of their property by the State of New York without prior notice and an opportunity to be heard.

3. On April 30, 1974, National Sports made a further payment pursuant to the Order of Attachment and Levy to the Sheriff of $4,865, which monies were the property of and belonged to Wrestling Revue and to which it was immediately entitled to the beneficial use thereof.

4. On June 5, 1974, National Sports made a further payment pursuant to the Order of Attachment and Levy to the Sheriff of $5,000, which monies were the property of and belonged to Wrestling Revue and to which it was immediately entitled to the beneficial use thereof.

5. On June 30, 1974, National Sports will be required to make the final payment under the aforesaid settlement agreement of March 8, 1974 in the amount of $4,811.46 and pursuant to the Order of Attachment and Levy will be required to make such payment to the Sheriff, and of which, monies, Wrestling Revue will be immediately entitled to the beneficial use thereof on the 30th day of June, 1974.

Supplemental Complaint.

6. The payments made by National Sports to the Sheriff as set forth in ¶¶ 3 and 4, ante, and the payment that National Sports will be required to make to the Sheriff on June 30, 1974, as set forth in ¶ 5, ante, violate the procedural due process rights of Wrestling Revue guaranteed to it by the Fourteenth Amendment to the Constitution of the United States, by the Sheriff on behalf of the State of New York, taking its property from National Sports, without prior notice and an opportunity to be heard.

SUPPLEMENTAL PRAYER FOR RELIEF

That in addition to the prayer for relief contained in Part XI of the original complaint in this proceeding, that the 3-judge court convened herein direct and order the Sheriff of the City of New York to forthwith pay over and to deliver to Wrestling Revue the sum of $24,200 and to Bert Randolph Sugar the sum of $124.17 presently in his custody and possession, received by him pursuant to the Order of Attachment and levies made thereunder, with lawful interest thereon, without any deductions for any fees, costs and expenses.

Dated: New York, New York
June 24, 1974

GABRIEL I. LEVY
GABRIEL I. LEVY
JOHN G. LEDES
JOHN G. LEDES
Of the Firm of LEVY AND LEDES
Attorney for Plaintiffs

Order Pursuant to CPLR 6214(b).

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of Westchester, at the Westchester County Courthouse, in the City of White Plains, on the 7th day of December, 1973.

Present: HON. GEORGE BEISHEIM, JR., Justice

Index No. 6275/73

ACTION NO. 1

WRESTLING REVUE, INC.,
Plaintiff,

—against—

NATIONAL SPORTS PUBLISHING CORPORATION,
Defendant.

ACTION NO. 2

CURTIS CIRCULATION COMPANY,
Plaintiff,

—against—

CHAMPION SPORTS PUBLICATIONS, INC., WRESTLING REVUE, INC. and BERT RANDOLPH SUGAR,
Defendants.

Upon the annexed affirmation of PHILIP H. BUSNER dated December 4, 1973, CURTIS CIRCULATION COMPANY (plaintiff

Exhibit A, Ordr Pursuant to CPLR 6214(b).

in Action No. 2) having duly moved for an order pursuant to CPLR 6214(b) to extend the time for payment, transfer or delivery of property hereinafter described and in the possession or custody of the person hereinafter described, and in which Champion Sports Publications, Inc., Wrestling Revue, Inc. and Bert Randolph Sugar (defendants in Action No. 2) have an interest, to the Sheriff of the County of New York, pursuant to levy made by the said sheriff by service of an order of attachment made by Sidney A. Fine, Justice of the Supreme Court, County of New York, on April 13, 1973, upon National Sports Publishing Corporation, until March 24, 1974, upon the ground that the ninety day period after the service of such attachment upon said garnishee, on which they are to make payment, transfer or delivery is about to expire,

Now, on motion of YOUNG, SONNENFELD & BUSNER, attorneys for Curtis Circulation Company, it is

ORDERED that the motion be and the same hereby is granted and that the time in which to pay, transfer or deliver the following described personal property be and hereby is extended to March 24, 1974:

> All property in the possession or control of National Sports Publishing Corporation in which any or all of the defendants, Champion Sports Publications, Inc., Wrestling Revue, Inc. and Bert Randolph Sugar have any title or interest.

ENTER

GEORGE BEISHEIM, JR.
J.S.C.

Exhibit

Affirmation in Support of Order Pursuant to CPLR 6214(b).

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

ACTION No. 1

WRESTLING REVUE, INC.,
Plaintiff,

against

NATIONAL SPORTS PUBLISHING CORPORATION,
Defendant.

ACTION No. 2

CURTIS CIRCULATION COMPANY,
Plaintiff,

against

CHAMPION SPORTS PUBLICATIONS, INC., WRESTLING REVUE, INC. and BERT RANDOLPH SUGAR,
Defendants.

STATE OF NEW YORK }
COUNTY OF NEW YORK }

PHILIP H. BUSNER, an attorney at law duly admitted to practice before the Courts of the State of New York and a partner in the firm of YOUNG, SONNENFELD & BUSNER, attorneys of record for Curtis Circulation Company, affirms

Exhibit.

under penalties of perjury as follows:

1. I am fully familiar with all the facts hereinafter stated.

2. The within action represents a consolidation of two actions, the first action listed having been commenced in Westchester County and the second action listed having been commenced in New York County. The actions were consolidated by order of this Court dated September 25, 1973.

3. On April 13, 1973, an order of attachment was made and entered in the New York County action directing the Sheriff of New York County to levy upon the property of Champion Sports Publications, Inc., Wrestling Revue, Inc. and BERT RANDOLPH SUGAR. A copy of said order is annexed hereto as Exhibit A.

4. Thereafter, the Sheriff of New York County levied by service of the order of attachment on National Sports Publishing Corporation on April 16, 1973 and then again levied by service on the same corporation on September 24, 1973. Pursuant to the earlier levy, the sheriff took into possession the sum of $9,323.54. In response to both levies, National Sports Publishing Corporation notified the sheriff in their respective garnishee statements that there were additional monies that would have been owing by National Sports Publishing Corporation pursuant to various agreements except for the claim of National Sports Publishing Corporation that it had offsets against said defendants which were in excess of such monies otherwise due and owing. Accordingly, the sheriff has not taken any additional monies into possession although the order of attachment is in the amount of $28,588.08 exclusive of probable interest, costs, sheriff's fees, etc.

Exhibit.

5. The latter levy made by the sheriff was made by service of the order of attachment on September 24, 1973. Pursuant to CPLR 6214(b), the time for payment, transfer or delivery of the funds held by National Sports Publishing Corporation will expire on December 24, 1973. Curtis Circulation Company requires additonal time to investigate and determine the bona fides of the claim of National Sports Publishing Corporation that it has a right to withhold such additonal funds from the levy of the sheriff.

WHEREFORE, it is respectfully requested that an order issue extending the time to pay, transfer or deliver for six months until March 24, 1974.

Dated: New York, New York
December 4, 1973.

PHILIP H. BUSNER

Order.

At a Special Term, Part I of the Supreme Court of the State of New York, held in and for the County of Westchester at the Westchester County Courthouse, in the City of White Plains on the 16th day of April, 1974.

Present

HON. ANTHONY J. CERRATO,
Justice.

Index No. 6275/73

Action No. 1

WRESTLING REVUE, INC.,

Plaintiff,

against

NATIONAL SPORTS PUBLISHERS CORPORATION,

Defendant.

Index No. 6102/73

Action No. 2

CURTIS CIRCULATING COMPANY,

Plaintiff,

against

CHAMPION SPORTS PUBLICATIONS, INC. WRESTLING REVUE, INC., and BERT RANDOLPH SUGAR,

Defendants.

The plaintiff in Action No. 2 having moved this Court for an order pursuant to CPLR 6214 (b) and (e) extending the time for payment, transfer or delivery or property in the hands of National Sports Publishers Corporation,

levied upon by the Sheriff of the County of New York pursuant to an order of attachment made in said Action No. 2 and extending the time within which to file a special proceeding to compel payment, delivery or transfer of such property to March 24, 1975, and said motion having come on to be heard and the Court having rendered its decision in writing,

Now, on reading and filing the order to show cause dated March 11, 1974, the affirmation of Philip H. Busner, dated March 7, 1974, and the exhibits annexed thereto, in support of said motion, and no papers having been submitted in opposition to said motion and upon all of the pleadings and prior proceedings herein,

Now, on motion of Young, Sonnenfeld & Busner, attorneys for Curtis Circulating Company, plaintiff in Action No. 2, it is

ORDERED, that said motion is granted in all respects, and it is further

ORDERED, that the time in which to pay, transfer or deliver the following described personal property, and the time within which to file a special proceeding to compel payment, delivery or transfer of such property, be and hereby is extended to March 24, 1975:

> All property in the possession or control of National Sports Publishing Corporation in which any or all of the defendants, Champion Sports Publications, Inc., Wrestling Revue, Inc., and Bert Randolph Sugar, have any title or interest.

Enter

s/ HON. ANTHONY J. CERRATO, Justice
J. S. C.

Opinion, 3 Judge Court, Reproduced at Jurisdictional Statement p. 1a.

Opinion and Order Conveying 3 Judge Court, Reproduced at Jurisdictional Statement p. 15a.

Judgment, 3 Judge Court, Reproduced at Jurisdictional Statement p. 31a.

Notice of Appeal, New York State, Reproduced at Jurisdictional Statement p. 35a.

Notice of Appeal, Curtis Circulation Co. and Continental Casualty Co., Reproduced at Jurisdictional Statement p. 33a.

Letter of Messrs. Levy and Ledes to the Honorable John J. McCloskey, Sheriff of the City of New York, dated December 21, 1973 (p. 168 of Plaintiffs' Appendix).

Law Offices
LEVY AND LEDES
270 Madison Avenue, New York, N. Y. 10016
(212) 371-8000

December 21, 1973

JOHN C. LEDES
GABRIEL I. LEVY

The Honorable John J. McCloskey
Sheriff of the City of New York
New York County Division
31 Chambers Street
New York, New York 10007

Re: Curtis Circulation Company v.
Champion Sports Publishing Inc.
Wrestling Revue, Inc. and Bert
Randolph Sugar

Dear Sir:

We are the attorneys for Champion Sports Publishing, Inc., Wrestling Revue, Inc. and Bert Randolph Sugar in connection with an action commenced by Curtis Circulation Company as plaintiff in the Supreme Court, New York County, Index No. 6102/73.

We have been advised by National Sports Publishing Corporation that on April 13, 1973, an Order of Attachment was granted to the plaintiff in such action against the property of all of the defendants to the extent of $28,588.08 and that you have levied against funds due to Wrestling

Letter of Messrs. Levy and Ledes to the Honorable John J. McClosky, Sheriff of the City of New York, dated December 21, 1973 (p. 168 of Plaintiffs' Appedix).

Revue, Inc. and Bert Randolph Sugar by National Sports Publishing Corporation.

Demand is herewith made that forthwith you advise in writing as to the amounts of monies presently being held by you pursuant to such Order of Attachment setting forth the dates that such monies were paid over to you by National Sports Publishing Corporation and as to the name of the defendant to whom such monies were due from National Sports Publishing Corporation.

We further demand that you also advise us as to the amounts of any outstanding levies made by you pursuant to such Order of Attachment.

Finally, please advise us if any restraining notices, liens, garnishees or any other claims have been made against the funds being held by you pursuant to such Order of Attachment, setting forth the names, addresses and amounts of such claims.

Your immediate written response hereto is expected.

Very truly yours,

GABRIEL I. LEVY
GABRIEL I. LEVY

GIL/rs

Letter of Messrs. Levy and Ledes to the Honorable John J. McCloskey, Sheriff of the City of New York, dated June 20, 1974 (p. 170 of Plaintiffs' Appendix).

Law Offices
LEVY AND LEDES
270 Madison Avenue, New York, N. Y. 10016
(212) 725-0150

June 20, 1974

JOHN C. LEDES
GABRIEL I. LEVY

The Honorable John J. McCloskey
Sheriff of the City of New York
New York County Division
31 Chambers Street
New York, New York 10007

Re: Curtis Circulation Company v.
Champion Sports Publishing Inc.
Wrestling Revue, Inc. and Bert
Randolph Sugar

Dear Sir:

On December 21, 1973, we wrote to you with respect to monies being held by you subject to an order of attachment in the above-entitled action, being the sole and exclusive property of *our* clients Bert Randolph Sugar and Wrestling Revue, Inc., defendants therein.

At that time we requested that you advise us in writing as to the amounts of money then being held by you pursuant to the order of attachment. You never even had the courtesy to respond to such letter even though the money that you were holding belongs to *our* clients. Since such date we have been advised by National Sports Publishing

Letter of Messrs. Levy and Ledes to the Honorable John J. McClosky, Sheriff of the City of New York, dated June 20, 1974 (170 of Plaintiffs' Appendix).

Corporation that additional monies have been paid under the order of attachment and that you are holding somewhere in the neighborhood of $20,000.

Final demand is herewith made that you immediately advise us in writing as to the amounts of monies presently being held by you pursuant to such order of attachment setting forth the dates that such monies were paid over to you by National Sports Publishing Corporation. We further demand that you advise us if any restraining notices, liens, garnishees or any other claims have been made against the funds being held by you pursuant to such order of attachment setting forth the names, addresses of the claimants and the amounts of such claims, if any.

We might further point out to you that an action had been commenced in January, 1974 in the United States District Court for the Southern District of New York, with respect to such attachment, in which action you were a named party defendant and served with the summons and complaint. Unfortunately you saw fit to completely ignore this proceeding and are in default in both appearing and answering, although you may well be liable for substantial money damages therein if the 3-judge panel being convened therein should declare Article 62 of the New York Civil Practice Law and Rules unconstitutional.

Unless we receive a written response setting forth the demanded information within one week we will request of the 3-judge panel proper relief against the Sheriff of the City of New York.

Your immediate written response is requested.

Very truly yours,

GABRIEL I. LEVY
GABRIEL I. LEVY

GIL/rs